TAMIL NADU GENERATION & DISTRIBUTION CORPORATION LTD.,

From
Er. N.Sathiaseelan,B.E.,M.B.A.,M.I.E.,
Certified Energy Manager,
Chief Engineer/Mech/Coal,
144, Anna Salai,
Chennai – 600 002.

To
The General Manager(CS & BD),
M/s.Kamarajar Port Limited,
4th Floor, Super Speciality Diabetic Centre,
(erstwhile DLB Building)
Rajaji Salai, Chennai – 600 001.

Lr.No.CE/Mech/Coal/SE/E4/A2/F.KPL/D. 21 /2016 Dated: 16.02.2016.

Sir,

Sub: Agreement between TANGEDCO & KPL for handling of coal at CB-1 & CB-2 –Signed copy of Agreement – Forwarded - Reg.

Ref: 1.Dir(Opn)'s Lr.No. KPL / O P / Traffic / TANGEDCO/01 Dt:18.05.2015.
2. TANGEDCO's Lr.No.CE/Mech/Coal/SE/E4/A1/F.Chart/D.71/2015 Dt:05.06.2015
3.GM(Opn)'s Lr.No. KPL/OP/Traffic/TANGEDCO/03 Dt:27.07.2015.
4. TANGEDCO's Lr.No.CE/Mech/Coal/SE/E4/A1/F.KPL/D.124/2015 Dt:12.09.2015
5.GM(CS & BD)'s Lr.No. KPL/OP/Traffic/TANGEDCO/12 Dt:21.12.2015.

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With reference to the above, it is to be informed that One set of Original Agreement between TANGEDCO & M/s.Kamarajar Port Limited for unloading of coal at Coal Berth-I & Coal Berth-II of Kamarajar Port Limited signed by the Director (Generation) on behalf of TANGEDCO on 12.02.2016 is herewith enclosed.

Thanking You.

Yours faithfully,

16.2.2016

CHIEF ENGINEER/MECH./COAL

Encl: 1 set of Original Agreement (18 sheets)

Copy submitted to the Director(Generation)/TANGEDCO for kind information, please.
Copy to the Chief Engineer / Projects / TANGEDCO (with copy of Agt.)
Copy to the Chief Financial Controller / General / TANGEDCO (with copy of Agt.)
Copy to the Financial Controller / Coal Handling / TANGEDCO (with a copy of Agt.)



தமிழ்நாடு தமிலநாடு TAMIL NADU

BE 326432

K. VIMALA
Stamp Vendor
IInd Line Beach Ch-1.
Lic. No. 109/98.

AGREEMENT FOR THE USE OF TANGEDCO DEDICATED COAL BERTHS FACILITY (CB1 & CB2)

This Agreement made on this 12th day of FEBRUARY 2016 at Chennai

Between

Kamarajar Port Limited (Erstwhile Ennore Port Limited), a Government of India Undertaking, under the Administrative control of Ministry of Shipping, Government of India, incorporated and registered in India under the Companies Act, 1956 and having its office at 4th Floor, Super Speciality Diabetic Centre (erstwhile DLB building) Near Clive battery bus stop, Rajaji Salai, Chennai – 1, (hereinafter referred to as **"KPL"**, which expression shall unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as the party of the First Part;

and

Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO), a Corporation incorporated under the Companies Act, 1956 (Central Act 1 of 1956) wholly owned by the Government of Tamil Nadu and a successor entity to the erstwhile Tamil Nadu Electricity Board (TNEB), having its registered office at NPKRR Maaligai, No.144, Anna Salai, Chennai - 600 002 (hereinafter referred to as **"TANGEDCO"** which term shall unless excluded by or repugnant to the subject or context thereof, include its Successors and Permitted Assigns, of the Second Part;

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Director (Generation)
Tamilnadu Generation &
Distribution Corporation Ltd.
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

WHEREAS

A. KPL has developed a deep water sea port facilities which include, inter alia, North and South Breakwaters, deep waterfront with Approach channel, Turning circle and alongside coal berths dredging and constructed a Wharf at the Ennore Port, with two continuous berths measuring about 560 metres near the South Breakwater - CB1 & CB2 (hereinafter referred to as 'Dedicated Coal Berths').

B. KPL has handed over to TANGEDCO, the Dedcated Coal Berths and permitted TANGEDCO for creation of coal unloading facilities like unloading machineries, conveyor system and other back-up facilities to meet the coal requirements of thermal power plants wholly or jointly owned by TANGEDCO.

C. TANGEDCO has been handling coal cargo from 22.06.2001, as per the Tariff and terms and conditions finalized and recorded in the minutes of the meeting held on 10.12.2001 between the KPL and the TANGEDCO(Formerly known as TNEB) a copy of which is annexed hereto.

D. The terms and conditions of this agreement are in line with the terms and conditions agreed in the **meeting held on 10.12.2001 & 06.11.2014.**

E. The Parties are desirous of entering into an Agreement, setting out the terms and conditions with respect to the handling of the said Coal Cargo.

This deed witnesseth and it is hereby agreed by and between the Parties hereto as follows:-

1. DEFINITIONS AND INTERPRETATION:-

1.1. DEFINITIONS:-

1.1.1. 'Agreement' means this Agreement for the use of TANGEDCO Dedicated Coal Berths Facility, as amended, supplemented or modified from time to time in accordance with terms and conditions hereof.

1.1.2. 'Annual Tonnage Handled' means the actual tonnage of coal handled/offloaded by the TANGEDCO at the Dedicated Coal Berths in a Financial Year, based on manifested quantity in the bill of lading.

1.1.3. 'Applicable Laws' means any statute, law, regulation, ordinance, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing,

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by any Government Authority having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.

1.1.4. 'Applicable Permits' means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project Facilities and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other transaction document.

1.1.5. 'Captive User' means TANGEDCO (Formerly known as TNEB) and its JV Companies operating at CB1 and CB2.

1.1.6. 'Clearance' means any consent, license, approval, permit, exemption or other authorization of whatsoever nature which is required to be granted by any Competent Authority and / or any filing or registration with a "Competent Authority" which is required from time to time, to operate and maintain the facilities.

1.1.7. 'Coastal Cargo' means cargo (coal) transported to Kamarajar Port on a ship on coastal run as declared by DG(Shipping).

1.1.8. 'Competent Authority' means any agency, legislative, judicial or executive authority, department, Ministry, public or statutory person, whether autonomous or not, of the central, State or Local Government or any other sub-division thereof.

1.1.9. 'Composite Tariff ' means the Tariff agreed between the KPL and the Captive user to be paid to KPL from time to time for each metric tonne of coastal cargo coal/imported coal handled at the Dedicated Coal Berths based on manifested quantity in the bill of lading as elaborated in clause 5 of this agreement.

1.1.10. 'Dedicated Coal Berths' means the wharf constructed by KPL with two continuous berths measuring about 560 meters - CB1 and CB2 near to the South Break water in Kamarajar Port for the Coal requirements in the power plants wholly or jointly owned by the Captive User.

1.1.11. 'Ennore Port' shall mean the major Port of Ennore notified under the Ports Act, 1908 (Central Act 15 of 1908).

1.1.12. 'ETPS' means Ennore Thermal Power Station owned by TANGEDCO.

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1.1.13. 'Financial Year' or 'Year' means the period commencing from 1st April to 31st March of the following year.

1.1.14. 'Foreign Cargo' means cargo (Coal) transported to Kamarajar Port on a ship on foreign run as declared by customs.

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

1.1.16. 'MT or Tonne' shall mean Metric Tonnes.

1.1.17. 'MTPS' means Mettur Thermal Power Station owned by TANGEDCO.

1.1.18. 'NCTPS' means North Chennai Thermal Power Station owned by TANGEDCO.

1.1.19. 'Person' means any individual, company, partnership, Joint Venture, Trust, unincorporated organization, State Government or Local Authority or any authority or agency or any other legal entity.

1.1.20. 'Project Facilities' means the top up coal handling facilities like mechanized and / or semi mechanized unloaders / equipments, conveyor system and other back up facilities and services created at the Dedicated Coal Berths by the Captive user or its authorized persons.

1.1.21. 'Scale of Rates' (SOR) means the Tariff / charges agreed as per MOM dated 10.12.2001 for various facilities and services provided at Kamarajar Port.

1.1.22. 'Services' means the services provided by the KPL to TANGEDCO under this Agreement.

1.1.23. 'Tariff' means the Composite Tariff.

1.1.24. 'Tariff Year' means the period commencing from 01st July to 30th June of the following year.

1.1.25. 'Third party' means any person other than the Parties to this Agreement.

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1.1.26. 'Captive user cargo' means coal imported for use in Thermal Power Plants of TANGEDCO or its JV Companies located at North Chennai, Ennore and Mettur, viz., NCTPS, ETPS and MTPS.

1.1.27. 'Vessel Related Charges' means the charges levied on the vessels, which includes Port dues, inward and outward pilotage and berth hire charges.

1.1.28 'Wharfage' means the charges to be paid to KPL for handling the cargo in the port as per the SOR.

1.2 INTERPRETATION:-

The descriptive headings of clauses are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement.

1.2.1 The use of words in the singular or plural or with a particular gender shall not limit the scope or exclude the application of any provision of this Agreement to any person or persons or circumstances except as the context otherwise permits.

1.2.2 The references to the word 'agreed' shall be construed as being agreed between the Parties hereto.

1.2.3 The Annexure to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly setout in the body of the Agreement.

1.2.4 The terms 'hereof', 'hereby', 'hereto' and 'derivative' or similar words refer to this entire Agreement.

2. SCOPE OF FACILITIES AND SERVICES:-

2.1. KPL hereby agrees to provide to the Captive user and the Captive user agrees to accept from KPL, the services in relation to the facilities during the Term in consideration of payment of the Tariff by the Captive user or his authorised agents to KPL in accordance with the terms of this Agreement.

2.2. In case of TANGEDCO, proposing to expand its operations, it shall secure the prior permission of KPL and implement the same.

2.3. KPL shall make available two Dedicated Coal Berths - CB1 & CB2 that has been constructed at Kamarajar Port for the provision of facilities and services to TANGEDCO in accordance with this Agreement.

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2.4. Whenever any of the berths in the Dedicated Coal Berths - CB1 and CB2 is vacant, KPL has the right to use or allot the berth for handling any cargo or other port users without any hindrance to Captive user's equipments subject to the condition that the vessels at berth to vacate within 4 hours to facilitate berthing of arrived Captive users vessels.

2.5. KPL shall provide the marine related services to TANGEDCO under this Agreement, which, inter alia, includes providing and maintaining sufficient depth, pilotage services and berthing and unberthing facility for unloading the coal.

2.6. Captive user shall provide Project Facilities including design, finance, construct, operate and maintain the coal handling system in the Dedicated Coal Berths and the equipments with back-up facilities and services required for coal handling in the said coal berths through its own or authorized persons.

2.7. Captive user, during the Term of the Agreement, shall undertake all necessary and prudent measures with regard to safety precautions, fire protection, security, transportation, materials, plant and equipment etc, inter alia, and to be abided by the instructions given by KPL as and when required.

2.7.1. Unloading of coal from the vessel and evacuating the same by the Conveyor system.

2.7.2. Compliance with all applicable safety procedures and environmental laws while handling coal in the coal berths and port.

2.7.3. Maintenance and submitting of all relevant documentation related to coal handling as per regulatory norms.

2.8 Captive user shall, to enable proper planning and scheduling by KPL, provide from time to time, to KPL considering the specifications mentioned in clause 8.1.8 mentioned hereunder:-

a) The Expected Time of Arrival (ETA) of the vessels,

b) quantity of coal to be off-loaded; and

c) anticipated time for completion of unloading.

3. <u>CARGO RESTRICTIONS:</u>-

The Captive user shall ensure that except for the Captive user cargo required for its own/ joint venture Thermal Power Stations no other cargo and/or Third Party cargo is handled at the Dedicated Coal Berths without prior written permission from the KPL.

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4. **TERM :-**

4.1 This Agreement shall be deemed to have come into effect from 22.06.2001 ("Effective Date") and shall continue to be in force for a period of 30 years i.e. upto 30.06.2031 unless terminated earlier in accordance with the terms hereof.

4.2 The Term of this Agreement may be renewed for a further period of ten years on the terms and conditions to be mutually agreed by the Parties herein.

5. **TARIFF AND PAYMENT:**

5.1. This Tariff is valid only for TANGEDCO and its Joint Venture Cargo.

5.2. The Captive user shall pay to KPL a composite Tariff or applicable tariff as per SOR on or before the ship/vessel is berthing or sailing at the rate indicated as below:- No port clearance will be issued if tariff not paid

Period	Tariff (Rs.per MT)
22.06.2001 to 30.06.2004	90.00
01.07.2004 to 30.06.2007	101.70
01.07.2007 to 30.06.2010	118.70
01.07.2010 to 30.06.2013	143.37
01.07.2013 to 30.06.2016	178.92

(The above Tariff is applicable for 10 Million Tonnes of coal handled in a Tariff year. The above Tariff does not include service tax, other taxes and duties levied by the Central or State Governments, if any and which shall be paid or reimbursed by TANGEDCO/Joint Venture entity at the applicable rates from time to time. Revenue Earnings due to the additional coal Traffic handled through mechanized coal handling system of TANGEDCO and its Joint Venture over and above 10 Million Tonne of coal handled in a Tariff year would be shared by KPL and TANGEDCO equally. "The revenue sharing shall be passed on to TANGEDCO by way of 50% rebate in Tariff for the quantity handled in excess of 10 Million Metric Tonnes per Tariff year i.e., TANGEDCO is liable to pay only 50% of the applicable composite tariff for the quantity handled in excess of 10 Million Metric Tonnes per Tariff year for its cargo.

In respect of other Captive user cargo (i.e, NTECL), KPL shall collect 100% of Composite tariff & 50% of the same shall be passed on to TANGEDCO as its share of revenue by the way of credit notes at the end of the tariff year" subject to deduction

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of applicable Service Tax and TDS. TANGEDCO or its Joint Venture shall not be liable to pay any other charge except the composite tariff.

5.3 The composite Tariff upto 30.06.2016 shall be as per table set out in Sub-Clause 5.2. The composite tariff thereafter shall be revised once in three years effective from 01.07.2016 as set out in sub clause 5.2 based on the Wholesale Price Index (WPI) occurring between 1 April 2013 to 31 March 2016 and so on for every three years. Such automatic adjustment of Composite Tariff will be made every three years and the adjusted Composite Tariff caps will come into force from the following 1st July.

For this purpose, the WPI for all commodities announced by the Department of Economic Affairs, Ministry of Finance, Government of India or equivalent shall be considered.

5.4. In respect of imported coal vessels, the Imported coal supplier/vessel owners shall pay the vessel related charges as per the prevailing KPL's scale of rates (SOR) and TANGEDCO shall pay difference between the composite tariff as determined in clauses 5.2 and 5.3 above and the vessel related charges paid by the imported coal supplier /vessel owners for wharfage.

5.5. The Tariff, includes, inter-alia, port dues, pilotage, berth hire charges upto two hours after completion of cargo and wharfage for services Provided by KPL.

5.6. Any shifting of the vessel if required by the Captive user shall be done by KPL and shifting charges shall be paid by the Captive user as per the existing scale of rates of KPL. If any vessel is shifted for KPL convenience, no shifting charges shall be claimed from the Captive User.

5.7. In case of conversion of a vessel from coastal run to foreign run at the berths, all the charges from the time of conversion will be charged as per existing scale of rates.

5.8. The Captive user shall pay the Tariff / Composite Tariff for each vessel / services availed in the coal berths on or before the vessel / ship vacates the berth.

5.9. The Captive User shall pay as per the notified Tariff /SOR for any other specific services requested and/or availed by the captive user.

5.10 On or before 10th of each calendar month, the Captive user shall prepare and submit to KPL a statement containing vessel details, quantity of coal handled etc. at each berth in the preceding month.

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5.11. KPL shall furnish the receipts for the payments received for each vessel / services rendered.

5.12. All payments made by the captive user/for the captive user shall be free and clear of any withholdings except any deduction of Income Tax at Source (TDS) and the necessary certificate of TDS shall be provided to KPL immediately.

6. **REPRESENTATIONS AND WARRANTIES:-**

6.1 Each party hereto represents and warrants that:

6.2 It is duly constituted and validly existing under the applicable laws of its incorporation;

6.3 It has full power and authority to execute, deliver and perform this Agreement and to carry out the transaction contemplated herein under the applicable laws;

6.4 It has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

6.5. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms thereof;

6.6. Agrees that its representations shall stand true and valid for the Term of this Agreement, including extension thereof, and it shall have an obligation to disclose to the other Party as and when any of its representations ceases to be true and valid; and

6.7. It has obtained all clearances, if any, required under law in relation to performance of its obligation under this Agreement.

7.0. OBLIGATIONS OF KPL:-

7.1. Without prejudice to the obligations of KPL in the other provisions of this Agreement, KPL shall:

7.1.1. authorize the Captive User or its authorized persons to design, finance, construct, operate and maintain the Project Facilities at the Dedicated Coal Berths.

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7.1.2. authorize the Captive user or its authorized persons to carry out stevedoring operations subject to compliance to the Stevedoring Policy of KPL as applicable from time to time.

7.1.3. inform the Captive user or its authorized representatives of the occurrence of any event which causes or may cause interruption or disruption of Services or the use of the Dedicated Coal Berths. KPL shall not be liable to any loss or damages, whatsoever, incurred or demanded of by TANGEDCO, on account of such interruption or disruption of services.

7.1.4. allow representatives of the Captive User and the Competent Authorities reasonable access to the Dedicated Coal Berths for monitoring, supervising and for carrying out their respective duties and functions and to investigate any other matter within their authority in as much as this does not interfere, unreasonably with the operations and maintenance or provision of services by KPL.

7.2. (a) KPL shall permit "Right-of-way" to NCTPS of TANGEDCO for routing of coolant water channel and coal conveyor system free of way-leave charges.
(b) TANGEDCO shall permit "Right of Way" for the routing of the new railway siding and the northern access road wherever the alignments pass through TANGEDCO (NCTPS) lands through their lands free of charges.

7.3. KPL shall maintain a sufficient depth of (alongside berth) and to accommodate berthing of panamax vessels maintaining a draft of 13.5m.

7.4. KPL shall ensure provision of necessary piloting facilities on arrival of TANGEDCO chartered / own vessels as per KPL policy.

7.5. KPL shall co-operate with TANGEDCO and not hinder or prevent TANGEDCO from complying with its obligations under this Agreement.

8. OBLIGATIONS OF TANGEDCO:-

8.1 Without prejudice to the obligations of TANGEDCO specified in the other provisions of this Agreement, TANGEDCO shall:

8.1.1 Comply to the Stevedoring policy of KPL as applicable from time to time for all stevedoring operations by TANGEDCO or its authorized persons at the Dedicated Coal Berths;

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8.1.2 make timely payments of the amounts due to KPL in accordance with the terms of this Agreement;

8.1.3. ensure that the berth is vacated soon after the cargo operation is completed. If the ship overstays in the berth beyond two hours of completion of cargo, TANGEDCO shall pay all port charges as per Scale of Rates for the stay beyond two hours.

8.1.4. ensure that no damage is caused to the Coal Berths but if any such damage is ascertained after a joint inspection the Captive user will ensure that damages are paid by the Stevedores.;

8.1.5. comply with all environment rules and regulations from time to time and ensure that there is no pollution to Port waters and environment.

8.1.6. ensure that the Project Facilities always maintained following the Good Industrial Practices.

8.1.7. ensure and comply with all labour laws including the Dock Safety Regulations for the personnel employed under this Agreement directly or indirectly.

8.1.8. provide, from time to time, the particulars of the Vessels, Expected Time of Arrival and quantity of coal being handled and anticipated time for completion of unloading;

8.1.9. co-operate with KPL and not hinder or prevent KPL from complying with its obligations under this Agreement;

8.1.10. All major maintenance works by TANGEDCO in the Project Facilities may be taken up in consultation with KPL.

9. FORCE MAJEURE:-

9.1 General :-

a "Force Majeure Event" shall mean any event or circumstance or a combination of events and circumstances which are beyond the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that

(i) Such circumstances, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party;

(ii) Such event materially and adversely affects the ability of the affected Party to perform its obligations under this Agreement, and the affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to

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prevent or avoid the effect of such event on the affected party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof;

(iii) Public disorder, insurrection, rebellion, sabotage, acts of terrorism, riots or violent demonstrations of a local, regional or national character;

(iv) Imposition of trade or other embargo against India or the concerned industry;

(v) Explosions, fires, earthquakes, cyclones, tsunami or other natural calamities and Acts of God;

(vi) Strike or other industrial action by workers or employees of a party;

(vii) Dangers of navigation, perils of the sea or other navigable water;

(viii) Any central, state, local or municipal legislation, ruling, ordinance, notice order or the like affecting the performance of the Agreement; and

(ix) Any act of the central, state or local government or any instrumentality thereof which affects the performance by a party of any of its obligations under this Agreement.

9.2. **NOTICE OF A FORCE MAJEURE EVENT:-**

As soon as possible and in any event within 7 (seven) days following the commencement of any Force Majeure Event, if either Party desires to claim such Force Majeure Event as a cause for delay in the performance of any obligation hereunder, it shall advise the other Party in writing of the date of commencement, the nature and expected duration of such Force Majeure Event.

As soon as possible and in any event within 7 (seven) days following the termination of such Force Majeure Event, the Party having invoked such Force Majeure Event as a cause for such delay shall submit to the other Party, reasonable proof of the nature of such delay and its effect upon the time of performance.

9.3. SUSPENSION OF OBLIGATIONS:-

Provided that the party claiming to be affected by the Force Majeure Event has complied with the notice procedure under Clause 9.2., any period of time specified in this Agreement for the performance of an obligation, including the term, shall be appropriately extended for a period equal to that during which the effect of the Force

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Majeure Event applies to the obligation and the Parties obligations which are affected by Force Majeure Event shall be suspended for the period of Force Majeure Event.

9.4. CONSULTATION AND DUTY TO MITIGATE:-

The Party claiming relief under Force Majeure Event shall at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force Majeure Event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable. The Parties shall consult with each other for a period of 30 (thirty) days or such longer period, as the Parties may agree in writing, to determine the reasonable measures to be implemented to minimize the losses of each party resulting from the Force Majeure Event.

9.5. PROLONGED FORCE MAJEURE EVENT:-

In the event that a Force Majeure Event continuously impedes or prevents a party's performance for a period exceeding 180 days from the date of commencement of such Force Majeure Event, notwithstanding the suspension of the obligations of the Parties, either party shall have the right to terminate this Agreement. Provided however, if the Force Majeure Event is of such nature that it causes excessive loss or damage to either party, that party has the right to terminate the Agreement if such Force Majeure Event continues for a period exceeding 180 days.

10.0. PROCEDURE TO TERMINATE THE AGREEMENT:-

10.1. Upon the occurrence of Force Majeure Event subsisting for a period exceeding 180 days, where such Force Majeure Event causes loss or damage, and the expiry of the Period to remedy, if applicable to KPL or TANGEDCO, as the case may be, may issue a written notice of intention to terminate. Such notice shall specify in reasonable detail the relevant Force Majeure Event giving rise to such notice.

10.2. Following the issuance of a notice of intention to terminate, the Parties shall consult for a period of 14 (fourteen) days or such longer period as the Parties may agree in writing, as to what steps shall be taken in order to prevent the termination of this Agreement and/or to remedy the relevant Force Majeure Event.

10.3. Upon the expiration of 14 (fourteen) days or such longer period as may have been agreed in accordance with clause 10.2 above and unless the Parties shall have agreed otherwise, or unless Force Majeure Event giving rise to the notice of intention to terminate has been remedied, the Party that gave the notice of intention to terminate may terminate this Agreement by delivering a written notice of termination

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to the other Party whereupon this Agreement shall immediately terminate in the manner provided under this Agreement.

11. **DISPUTE RESOLUTION:-**

11.1. CONSULTATION:-

In the event that any dispute, controversy or claim arises between the Parties in connection with or under this Agreement or the interpretation of any of its provisions, each Party shall appoint a Director/Board Member who is not involved in the day-to-day operations relating to the operation and maintenance of the facilities to serve on a Consultation Panel (the "Consultation Panel") and such Consultation Panel shall meet promptly upon the request of any Director/Member thereto or of any party, in an effort to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives on the Consultation Panel. The decision of the Consultation Panel shall be binding upon the Parties. All reasonable costs incurred by the members of the Consultation Panel in connection with this Agreement, including travel expenses shall be borne by KPL and TANGEDCO equally. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the Consultation Panel.

11.2 **ARBITRATION:-.**

11.2.1 In the event that the Parties are unable to resolve any dispute, controversy, difference or claim in accordance with clause 11.1, such dispute, controversy, difference or claim shall be settled by a panel of arbitrators (the "Arbitral Tribunal").

11.2.2 The Arbitral Tribunal shall consist of three Persons. KPL and TANGEDCO shall appoint one arbitrator each and such arbitrators shall, within 30 days of their appointment, designate a third person to act as an arbitrator, who shall function as the Presiding Arbitrator. The seat of the arbitration shall be Chennai and the arbitration shall be conducted in English language and in accordance with the Arbitration and Conciliation Act, 1996. (Central Act 26 of 1996).

11.2.3 Pending the submission of a dispute, controversy or claim to the Consultation Panel and/or the Arbitral Tribunal and thereafter until the final decision of the Consultation Panel and/or the Arbitral Tribunal, as the case may be, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final

Kamarajar Port Limited Chennai

Director (Generation)
Tamilnadu Generation & Distribution Corporation Ltd,
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

adjustment in accordance with such decision. Further, this Agreement shall remain subsisting and operative during the arbitration proceedings.

11.2.4 All costs incurred in connection with the Arbitration proceedings shall be paid by the Parties equally unless otherwise awarded by the Arbitral Tribunal.

12. MISCELLANEOUS:-

12.1. GOVERNING LAW.

This Agreement shall be governed by the Laws of India. The courts in Chennai shall have the exclusive jurisdiction in respect of any dispute, differences or claim in connection with or under this Agreement (including in respect of Arbitration Proceedings) and no other Court shall have jurisdiction whatsoever with regard to any dispute or difference or claim under this Agreement.

12.2. SEVERABILITY:-

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any law, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein. The Parties shall in good faith negotiate to amend such invalid, illegal or unenforceable provision in a manner that will most nearly achieve the object of such invalid, illegal or unenforceable provision.

12.3. COUNTER PARTS:-

This Agreement shall be executed in two counter parts each of which shall be deemed to be original but shall together constitute one Agreement only.

12.4. NOTICES:-

Any notice or communication required to be given pursuant to this Agreement, shall be in writing in English and shall be deemed to be properly given upon date of receipt if delivered by hand or sent by courier, if mailed by registered mail at the

Kamarajar Port Limited Chennai

Director (Generation)
Tamilnadu Generation &
Distribution Corporation Ltd.
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

time of posting, if sent by fax when dispatched (provided the sender's transmission report shows the entire fax to have been received by the recipient and only if the transmission was received in legible form) to:

1. Kamarajar Port Limited.: Chairman cum Managing Director
Regd. & Corporate Office:
4th Floor, Super Speciality Diabetic Centre
(erstwhile DLB building) Near Clive battery bus
stop, Rajaji Salai, Chennai – 1,
Ph: 044-25251666
Fax: 044-25251665

2. TANGEDCO .: Chairman cum Managing Director,
X Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai – 600 002.
Ph : 044 - 28521300
Fax: 044- 28544528

12.5. WAIVER:-

No forbearance, indulgence or relaxation or inaction or delay in exercising or omission to exercise any right, power or remedy accruing to any party upon any default under or breach of this Agreement shall impair any such right, power or remedy nor shall the same be construed to be a waiver or any acquiescence thereof, nor shall any action or inaction on the part of that Party in respect of any such default or waiver affect or impair any right, power or remedy of that party in respect of any other or continuing default or waiver.

12.6. ENTIRE AGREEMENT:-

Except as otherwise expressly set forth herein, this document embodies the complete Agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes and pre-empts any prior understandings, Agreements or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way.

Kamarajar Port Limited Chennai

Director (Generation)
Tamilnadu Generation &
Distribution Corporation Ltd.
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

12.7. **AMENDMENT:-**

Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties.

12.8. **REMEDIES:-**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in Law, in equity, by statute or otherwise. The Election of anyone or more of such remedies by a Party hereto shall not constitute a waiver by such Party of the right to pursue any other available remedies.

12.9. **RELATIONSHIP:-**

Nothing in this Agreement nor the performance by the Parties of their respective obligations thereunder shall constitute or be deemed to constitute a partnership between the Parties or confer on any party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make it/deem the agent of the other in any way.

12.10. **ASSIGNMENT:-**

No Party shall assign or transfer this Agreement in full or part or any of its rights, title, benefits, interests or obligations herein to any Third Party without the prior written consent of the other Party.

12.11. **AUTHORIZED REPRESENTATIVE:-**

Any action required or permitted to be taken and any document required or permitted to be executed under this Agreement may be taken or executed;

for KPL **General Manager (CS & BD)** by (Designation);

for TANGEDCO **Chief Engineer (Coal)** by (Designation)

Kamarajar Port Limited Chennai

Director (Generation)
Tamilnadu Generation &
Distribution Corporation Ltd.
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

Each Party hereto undertake and agree that in case of replacement of its Authorised Representative, it shall notify the other Party in accordance with clause 12.4 hereinabove of his name and title at least 5 (five) days prior to his taking office.

IN WITNESSES WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS THE DAY, MONTH AND YEAR HEREINABOVE WRITTEN:-

Signed and delivered by

for **KAMARAJAR PORT LIMITED**

Authorized signatory

In presence of:

V. KRISHNA SWAMY
SVA (C&I-BD)
Kamarajar Port Limited
Chennai.

for **TANGEDCO LIMITED**

Authorized signatory

(Er. K. SIVAPRAKASAM)
Director (Generation)
Tamilnadu Generation & Distribution Corporation Ltd.
TNEB Complex,
No. 144, Anna Salai, Chennai-600 002.

In presence of:

(N. SATHIASEELAN)
CHIEF ENGINEER/MECH/COAL
TAMIL NADU GENERATION & DISTRIBUTION CORPORATION LTD.
144, ANNA SALAI, CHENNAI-600 002

CONCESSION AGREEMENT BETWEEN

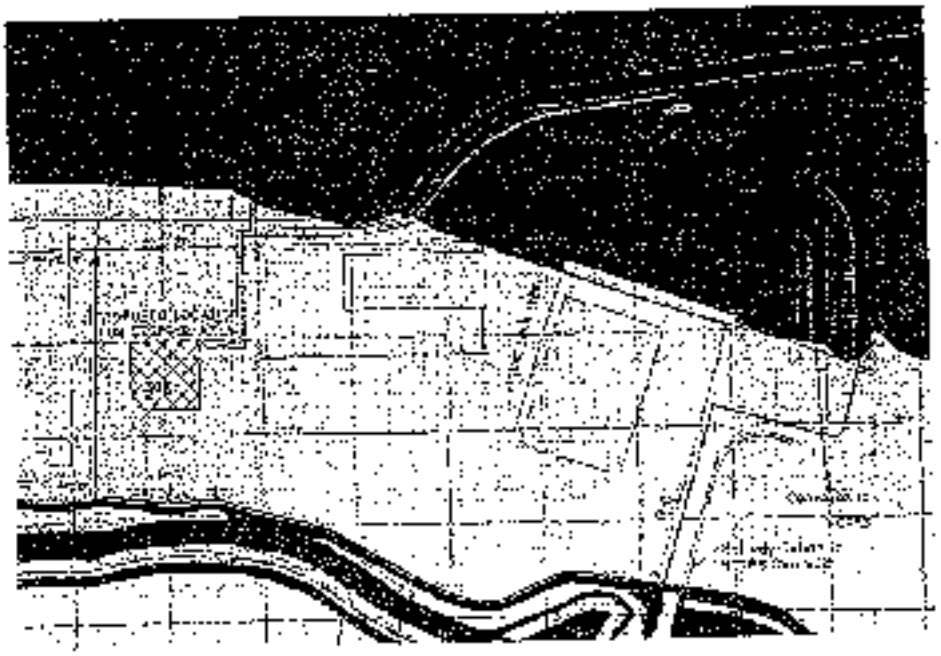
ENNORE PORT LIMITED

AND

ENNORE TANK TERMINALS PRIVATE LIMITED

TO DESIGN, ENGINEER, FINANCE, CONSTRUCT, OPERATE, MAINTAIN MARKET AND TRANSFER A COMMON-USER MARINE LIQUID TERMINAL AT ENNORE PORT

Agreement No: EPL/45-C/2002



Licence Agreement

Part I - Commercial Terms

November 2004

This document contains 64 pages

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(147)

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

तमिलनाडु TAMILNADU

Ennore Tanks Terminals Pvt. Ltd

A 286820

S. KRISHNA
STAMP VENDOR
Chennai Collector's Office Co.
CHENNAI-600 001.
Licence No. : A2/364/88/7

SUPPLEMENTARY AGREEMENT TO LICENCE AGREEMENT DATED 10TH DAY OF NOVEMBER 2004

This **SUPPLEMENTARY AGREEMENT** is made and entered into this 25th day of August 2006 BETWEEN

1. **ENNORE PORT LIMITED**, a company incorporated and registered in India under the Companies Act, 1956, and having its registered office at 'P.T.Lee Chengalvaraya Naicker Maligai', 1st Floor, No.23, Rajaji Salai, Chennai - 600 001 hereinafter referred to as the Licensor, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assignees) as party of the first part.

AND

2. **ENNORE TANK TERMINALS PRIVATE LIMITED**, a company incorporated and registered in India under the Companies Act, 1956, and having its registered office at No.39 Kasturirangan Road, Alwarpet, Chennai - 600 018, hereinafter referred to as the Licensee (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assignees) as party of the second part.

Contd... 2.

MLT/Sec'dt

p.t.o. 2.

WHEREAS

The Licensor and Licensee had entered into a LICENCE AGREEMENT on 10th Day of November 2004 AND it is now agreed between the parties to amend certain clauses in the LICENCE AGREEMENT.

HENCE, NOW, BOTH the PARTIES executed this SUPPLEMENTARY AGREEMENT to amend the following clauses in the Original License Agreement dated 10th November 2004 as detailed below:

CLAUSE 22.2 UNDER THE HEADING "EARLY TERMINATION DUE TO CHANGE IN LAW OR FORCE MAJEURE" stands substituted as below:

Upon Termination of this Agreement pursuant of Force Majeure Event as stated in Clause 18.2.1 and 18.2.2., the compensation payable by the Licensor to the Licensee shall, subject to Clause 22.6 and other applicable provisions of the contract, be the lower of:

1. The aggregate fair value as determined by the Expert being a reputed valuer, of (a) tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Licensee and comprised in the Project Facilities and Services, including the cargo handling equipments, which in the reasonable judgment of the said Expert are capable of being put to use and utilized by the Licensor and (b) the moveable assets which the Licensor agrees to take over, Less amounts if any due to the Licensor from the Licensee under the provisions of this Agreement

Or

ii) An amount equal to 90% of the Debt Due.

2. If the Termination of this Agreement is on account of a Political Event as per Clause 18.2.3, the compensation payable by the Licensor to the Licensee shall, subject to Clause 22.6 and other applicable provisions of the contract, be the lower of:

i) The aggregate fair value as determined by the Expert being a reputed valuer, of (a) tangible assets forming part of, fixed or attached to the ground, created, installed or provided by the Licensee and comprised in the Project Facilities and services including the cargo handling equipments, which in the reasonable judgment of the said Expert are capable of being put to use and utilized by the Licensor and (b) the movable assets which the Licensor agrees to take over. Less amounts if any due to the Licensor from the Licensee under the provisions of this Agreement.

OR

ii) The Debt Due

Contd. .. 3.

All other clauses of the License Agreement will continue to be effective in all respects.

This supplementary agreement also forms part of the Original License Agreement dated 10th November 2004.

IN WITNESS HEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For and On behalf of
Ennore Port Limited

Witness.

1. A Ranjeyapalan, Director (Op), EPL
S/o late Shri N.A. Chari

2. D Ganesan
S/o G. Murugan

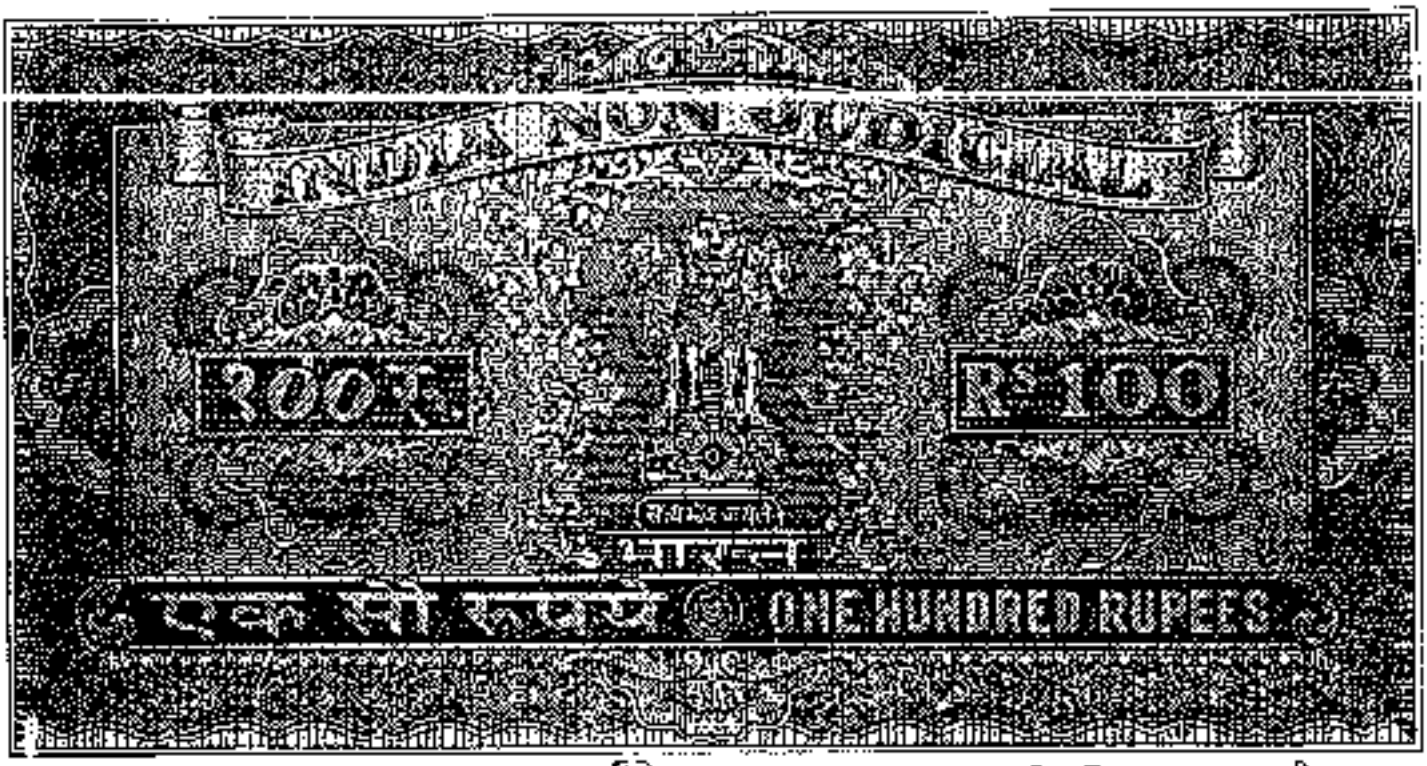
For and On behalf of
Ennore Tank Terminals Private Limited

Witness

1. (C. Annamalai)
S/o Late C. Arunachalam

2. (C. Jayadeva Reddy)
S/o Late V.N. Chinnaiah

100Rs.



ENNORE TANK TERMINALS
PVT LTD

A. ROUFBASHA, B.A.,
STAMP VENDOR, Lic. No. 8/83/97
New No. 17, Old No. 8,
P.R.V. KOIL STREET, MYLAPORE,
CHENNAI - 600 004. Ph : 24962447

LICENCE AGREEMENT (the "Agreement") is made and entered into this Tenth day of November 2004 BETWEEN:

ENNORE PORT LIMITED, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at No.15, Kasturirangan Road, Alwarpet, CHENNAI – 600 018, here inafter referred to as the Licensor, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the first part,

AND

ENNORE TANK TERMINALS PRIVATE LIMITED a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 39 Kasturirangan Road Alwarpet, CHENNAI – 600 018, hereinafter referred to as the "Licensee", or the "Company" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the second part;

Each of the Licensor and the Licensee shall be referred to herein as a "Party" and collectively as "Parties".

WHEREAS, the Licensor is desirous of developing a marine liquid Terminal with all backup facilities and equipment.

WHEREAS, in October 2002, the Licensor issued an advertisement inviting Request for Qualification (RFQs) from interested parties to *design, engineer, finance, construct, operate, maintain, market and transfer a common user marine liquid Terminal on B-O-T basis at Ennore Port;*

WHEREAS, the consortium of **IMC Limited, and Larsen &Toubro Limited** was qualified along with **three (3)** other bidders based on RFQ and (clarifications) submitted by the respective bidders and evaluated by the Licensor;

WHEREAS, in response to the Request for Proposal (RFP) document issued to the qualified bidders, the bidders submitted bids;

WHEREAS, the Licensor, after evaluating all the bids received by it, has selected the bid submitted by the consortium of **IMC Limited, and Larsen &Toubro Limited** as acceptable and decided to award the Licence to the Licensee vide Letter of Intent dated **12-10-2004** for award of Licence, enclosed as Appendix 1

WHEREAS, the signatory to the Agreement is the Company with equity participation in proportion of **74% and 26% and by IMC Limited and Larsen & Toubro Limited, respectively**, as indicated in the RFP document;

WHEREAS, a Memorandum of Understanding (MoU) as appended in Appendix 3 has been signed by **IMC Limited and Larsen & Toubro Limited**, identifying obligations and responsibilities of each equity participant in the Company.

WHEREAS, the Licensee was duly incorporated under the Companies Act, 1956, vide Certificate of Incorporation dated **5-11-2004** enclosed as Appendix 2,

WHEREAS, the Licensee has agreed to ***design, engineer, finance, construct, operate, maintain, market and transfer a common user marine liquid Terminal on B-O-T basis at Ennore Port*** with all backup facilities and equipment as per the provisions under this Agreement and the Licensor has agreed to grant Licence to the Licensee to do so on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties hereto as follows:

1. Definition of terms

1.1. Defined terms

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

1. **"Agreement"** means this licence agreement, as amended, supplemented or modified from time to time in accordance with terms and conditions hereof

2. **"Appendix"** means any of the schedules, supplements or documents, appended to this Agreement.

3. **"Applicable Laws"** means any statute, law, regulation, ordinance, rule, judgement, order, decree, bye law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Authority having jurisdiction over the matter in question,

4. **"Applicable Permits"** means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other transaction document.

5. **"Approved DPR"** means the detailed project report submitted by the Licensee to the Licensor and approved by the Independent Engineer for development of the Project, as per the provisions of Section 6.

6. **"Bid Submission Date"** means 13 May 2004.

7. **"Cargo Handling Charges"** shall include wharfage, storage, handling charges and other cargo related charges levied/leviable on cargo owners/consignors/consignees.

8. **"Change in Law"** shall have the meaning assigned thereto in Section 17.1.

9. **"Commercial Operations"** means commercial operations of the Project and Project Facilities to handle cargo on issue of Completion Certificate or on announcement of Date of Commercial Operations whichever is earlier.

10. **"Company Secretary"** means a secretary who shall be deemed to be in practice within the meaning of sub section (2) of section 2 of the Company Secretaries Act, 1980

11. **"Completion Certificate"** means the certificate to be issued by the Independent Engineer pursuant to Section 7.1 on completion of construction of the Terminal in accordance with the provisions of this Agreement

12. **"Consortium"** means the consortium consisting of (i) **IMC Limited** (ii) **Larsen & Toubro Limited** formed pursuant to the Memorandum of Understanding dated **18/12/2002** and annexed hereto as Appendix 3 entered into by them, **IMC Limited and Larsen & Toubro Limited**, for the purpose of bidding for the Project and to implement the Project through a Project Company to be formed and incorporated by them in India.

13. **"Consortium Member"** shall mean any member of Consortium.

14. **"Construction Guarantee"** shall have the meaning assigned thereto in Section 7.5.

15. **"Construction Phase/Construction Period"** shall have the meaning assigned thereto in Section 7.1.

16. **"Date of Award of Licence"** means the date of signing of this Agreement by both the Licensor and the Licensee.

17. **"Date of Commercial Operation"** means the date on which the Licensee is entitled to commence Commercial Operation of Project Facilities in accordance with the provisions of this Agreement including Section 11.1.

18. **"Day"** means the twenty four (24) hour period beginning and ending at 00.00 hours midnight Indian standard time.

19. **"Debt Due"** means the following sums expressed in Indian Rupees outstanding and payable to the Lenders under the Financing Documents:

    A. The principal amount of the debt provided by the Lenders under the Financing Documents, which is outstanding on date of issue of Transfer Information Notice as per the payment schedule laid out in the Financing Documents approved by the Licensor and given in Appendix 7; but excluding

        a) any amounts of debt provided by the Lenders in respect of working capital for the Project;

        b) any liabilities arising out of the security given for Financial Assistance

        c) any overdue payments of loan principal and interest, accumulated prior to the Termination Notice

        d) any consequential liabilities resulting from default under the Financing Documents, committed prior to the Termination Notice

20. **"Defaulting Party"** means a Party, which has committed a default of any of the terms and conditions of this Agreement and/or failed to discharge any of its obligations under this Agreement.

21. **"Deputy Conservator/Harbour Master"** means the Person designated as such by EPL from time to time for Ennore Port.

22. **"Design and Drawings"** means the conceptual and detailed design and drawings, backup technical information required for the Project and all calculations, samples, patterns, models, specifications and other technical information submitted by the Licensee from time to time and approved by the Independent Engineer in accordance with the provisions of this Agreement.

23. **"Detailed Project Report/DPR"** means the detailed project report submitted by the Licensee to the Licensor for development of the Project, as per the provisions of Section 6.

24(3)**"Direct Political Force Majeure"** shall have the meaning assigned thereto in Section 18.2.3.

24. **"Developer"** means the Licensee.

25. **"Ennore Port"** shall mean the major port of Ennore notified under the Indian Ports Act.

26. **"Encumbrance"** means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, option, lien, charge, easement or encroachment, and any restriction on use, voting, transfer or receipt of income or, exercise of any other attribute of ownership;

27. **"Environmental Clearance"** means the *one time initial in-principle* clearance (if any), for the Project, from the Ministry of Environment and Forests, under relevant environmental laws, being obtained prior to the execution of the Project. It is clarified that Environmental Clearance shall not include any general environmental clearance(s) required during the execution of the Project.

28. **"Expert Committee"** means the committee set up in accordance with Section 24.1.

29. **"Expert"** shall mean any person, body or organization with recognized specialist technical or professional expertise in respect of any field relevant for the purposes of this Agreement, to be appointed by the Parties by mutual consultation.

30. **"Final Compensation Payable"** means the compensation payable in accordance with Section 22.6.

31. **"Financial Assistance"** means all funded and non funded financial assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

32. **"Financial Close"** means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Documents.

33. **"Financing Documents"** means the documents executed by the Licensee in respect of Financial Assistance to be provided by the Lenders to the Project, but excluding any documents executed by the Licensee/any other Person in respect of Financial Assistance used to finance the equity share/owners capital of any Consortium Member and/or any other shareholder in the Licensee.

34. **"First Required Part of the Licensed Premises"** means that part of the Licensed Premises which would be first handed over to the Licensee as per the schedule provided in Appendix 4

35. **"Force Majeure Event"** shall have the meaning assigned thereto in Section 18.1 of this Agreement.

36. **"GoI"** means the Government of India

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

38. **"Government/Government Authority"** means the GoI, or any state government or local body or any other statutory body or corporation, any department, authority, instrumentality agency, judicial body or tribunal of GoI, or any state government or any other statutory body or corporation having jurisdiction over the Licensee, the Licensed Premises, the Terminal or any portion thereof.

39. **"Gross Block"** means the gross book value as defined in AS-10 (or modifications to AS-10 as applicable) in accounting standards published by the Institute of Chartered Accountants of India.

40. **"Gross Revenues"** means the revenues calculated as provided for in Section 11 VI of this Agreement.

41. **"Guarantee"** means any valid bank guarantee furnished by the Licensee in favour of the Licensor as per the provisions of this Agreement, enforceable and encashable in Chennai.

42. **"Handover Date"** means the date on which a letter is issued by the Licensor, or the date indicated in this letter indicating that the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises are handed over to the Licensee.

43. **"Handover"** means the non-exclusive permission to enter upon, occupy and use the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises for the purpose of implementing the Project in accordance with this Agreement granted by the Licensor to the Licensee. It is clarified that Handover shall not create any proprietary interest in the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises and the Licensor would reserve the right to enter upon and possess the said premises at any time.

44. **"Independent Engineer"** means the expert appointed in pursuance of Section 4

45. **"Indirect Indian Political Force Majeure"** shall have the meaning assigned thereto in Section 18.2.2

46. **"Law"** means any valid act, ordinance, rule, regulation, notification, directive, order, policy, by-law, administrative guideline, convention, treaty, judgement, decree, ruling or instruction having the force of law enacted or issued by a Government Authority.

47. **"Lead Consortium Member"** means M/s IMC Limited

47. "**Lease Agreement**" means the land lease agreement proposed to be entered into between the Licensor and the Licensee in relation to the Licensed Premises immediately upon the occurrence of Financial Close.

48. "**Lender**" means any Banks, financial institutions, non-banking finance companies and multilateral lending institutions engaged in the business of lending, providing debt to the Licensee in accordance with the normal and prudent business practices for the Project. "Lenders" shall have an analogous meaning.

49. "**Lenders' Rights of Substitution**" shall have the meaning assigned thereto in Section 19.3.7

50. "**Letter of Intent**" means the letter as provided in the Appendix I;

51. "**Licence Period**" means the period as provided in the Section 2.2.

52. "**Licence**" means the Licence granted by the Licensor to the Licensee in accordance with the provisions of Section 2.1 of this Agreement for implementing the Project.

53. "**Licensed Premises**" means the waterfront provided, and land to be leased by the Licensor to the Licensee and in which the Licensee is authorized to implement the Project in accordance with this Agreement and as per Appendix 12.

54. "**Licensee Event of Default**" shall have the meaning assigned thereto in Section 19.1.

55. "**Licensor Event of Default**" shall have the meaning assigned thereto in Section 19.2.

56. "**Material Adverse Effect**" means a material adverse effect on (a) the ability of the Licensee and/or the Licensor to observe and perform in a timely manner its obligations under this Agreement or any transaction document, (b) the ability of the Licensee and/or the Licensor to avail the benefits of the Licence in accordance with the terms of this Agreement and (c) the legality, validity, binding nature or enforceability of this Agreement or any other transaction document.

57. "**Maintenance Guarantee**" shall have the meaning assigned thereto in Section 15.2.14.

58. "**Minimum Annual Guaranteed Revenue**" means any of the minimum annual guaranteed revenue payable to the Licensor as provided for in Appendix 11.

59. "**Month**" means the calendar month or part thereof as per the Gregorian calendar".

60. "**Nominated Developer**" means the Developer nominated by the Lenders in exercising the Lender's Right of Substitution as per Section 19.3.7.

61. "**Non-Defaulting Party**" means the Party, which has not committed a default of any of the terms and conditions of this Agreement.

62. "**Non Political Force Majeure**" shall have the meaning assigned thereto in Section 18.2.1

63. "**Notice of Intent to Terminate**" shall have the meaning assigned thereto in Section 19.3.1.

64. "**Operations Phase**" means the period from the Date of Commercial Operation to the expiry/termination of the Licence Period

65. "**Paid up Equity**" means the sum of par values of the ordinary shares subscribed and paid up in the authorised capital of the Licensee

66. "**Part-I**" means this Agreement containing commercial terms of the RFP.

67. "**Part-II**" means Volume II, Part I of the RFP containing Project details.

68. "**Party**" means either the Licensor or the Licensee as the context may require or admit and "Parties" means both Licensor and Licensee.

69. "**Payment Guarantee**" shall have the meaning assigned thereto in Section 14.1.

70. "**Person**" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or non-governmental authority or agency or any other legal entity or organisation.

71. "**Port**" means Ennore Port including the Project

72. "**Project**" means the designing, engineering, financing, constructing, operating maintaining marketing and transfer of the Terminal by the Licensee, subject to the provisions of this Agreement, whether completed or at any stage of development and construction.

73. "**Project Company**" shall mean the Licensee.

74. "**Project Contracts**" means collectively this Agreement and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Licensee in connection with the Project and Project Facilities.

75. "**Project Facilities/Facilities**" means the facilities and services required as part of this Project and as set out in Part-II of this Agreement and any other additional facilities and services to be provided by the Licensee during the Licence Period in accordance with this Agreement.

76. "**Project Schedule**" means the schedule of project implementation and time frame for activities, milestones and deadlines as set out in Approved DPR.

77. "**Regulatory Authority**" means any statutory or non-statutory body appointed for regulation of ports and has a mandate to regulate any aspects at Ennore Port.

78. "**Remedy Period**" means the period given to the defaulting Party for curing the default as per Section 19.3.3.

79. "**Request for Proposal (RFP)**" means the document that solicited proposals for this Project from eligible bidders.

80. "**Request for Qualification (RFQ)**" means the request for qualification submitted to the Licensor for this Project by the bidders in response to the request for qualification document issued by the Licensor.

81. "**Revenue Share**" means the share of Gross Revenues to be paid by the Licensee to the Licensor based on the value as quoted in the commercial proposal of the Licensee, provided in Appendix 6.

82. "**Scale of Rates**" means the scale of rates announced and/or approved from time to time by the Licensor and/or notified by any statutory or other relevant body including the statement of terms and conditions thereof.

83. "**Scheduled Date of Transfer**" shall mean the date of expiry of the Licence Period.

84. "**Significant Consortium Member**" means the entity, which holds not less than 26% equity stake in the Licensee.

85. "**Statutory Auditor**" means the statutory auditor of the Licensee as defined under the Companies Act 1956

86. "**Subsequent Parts of the Licensed Premises**" means those parts of the Licensed Premises, which would be handed over to the Licensee after the handover of the First Required Part of the Licensed Premises as per the schedule provided in Appendix 4.

87. "**Tankage Area**" means those areas earmarked for tankage as described in the land-use plan of Ennore Port

88. "**Terminal**" means the Licensed Premises, the berths, pipeline trestle, storage area, tankage, items of equipment, plant and any other facilities required to be created as per the provisions of Part-II of this Agreement.

89. "**Termination**" shall refer to the applicability of the provisions of Section 19

90. **"Termination Notice"** shall have the meaning specified in Section 19.3.5

91. **"Transfer Assets"** shall have the meaning set forth in Section 20 of this Agreement.

92. **"Transfer Information Notice"** shall have the meaning assigned thereto in Section 19.3.6

93. **"Transfer Date"** means the date immediately following the date of expiry or termination as the case may be, of the Licence in accordance with the terms of this Agreement.

94. **"Vessel Related Charges"** means the charges levied on the vessels using the Port and the Project Facilities.

95. **"Year"** means the period of twelve months commencing from the Zero Date and every twelve month period thereafter, during the terms of this Agreement

96. **"Zero Date"** shall mean the starting date for the Licence Period, as per the provisions of Section 3.

1.2. Other references

In this agreement:

1. **"CISF"** means Central Industrial Security Force.
2. **"m"** means Metre, the unit of length
3. **"sq m"** means Square Metre, the unit of area
4. **"km"** means Kilo Metre, the unit of length
5. **"T"** means Metric Tonne, the unit of weight
6. **"CD"** means Chart Datum at Ennore Port

1.3. Interpretations

I. This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and / or oral representations and / or arrangements regarding the Project.

II. If however there is any aspect related to this Project, which is not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid document issued by the Licensor, as amended, and all correspondences between the Parties till the Date of Award of Licence.

III. This Agreement cannot be changed, modified or supplemented in any way except by an instrument in writing executed by the Parties.

IV. Any amendment, addition or variation to this Agreement shall be valid and binding, only if the same is mutually agreed upon by the Parties, executed in writing, and signed by the Licensor and the Licensee.

V. If, for any reason whatsoever, any part or parts of this Agreement shall be declared void or invalid by any competent arbitral tribunal or court or becomes voidable that shall not effect the other parts which shall remain valid and enforceable.

VI. Save as otherwise expressly provided, any reference in this Agreement to:

A. The words importing the singular shall mean the plural and vice-versa.

B. "Article" "Section" and "Appendix" shall refer, respectively to Articles, Section and Appendices of this Agreement. The Appendices to this Agreement shall form part of this Agreement and will be in force and effect as if the same were expressly set out in the body of this Agreement. Part II of this Agreement shall form an integral part of the Agreement.

C. A time or time of Day shall be construed as a reference to Indian Standard Time.

D. The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

E. Interest to be calculated and payable to the Licensor under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement.

F. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary english meaning.

G. All payments due to the Licensor under this Agreement shall be payable by demand draft payable in Chennai and drawn on a scheduled commercial bank in favour of Licensor, unless otherwise approved of by the Licensor

H. All payments under this Agreement shall be governed by the Negotiable Instruments Act

I. Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer or any other Person shall be valid and effectual only if it is in writing and under the hands of the duly authorised representative of such Party or the Independent Engineer or Person as the case may be in this behalf and not otherwise

J. Unless otherwise stated any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates

2. The Licence

2.1. Grant of Licence

In consideration of the Licensee agreeing to pay the Revenue Share and other payments under this Agreement as set out in Section 14 and subject to the provisions of this Agreement, the Licensor grants to the Licensee a licence (the "Licence") to implement the Project and provide

Project Facilities at the costs, charges and expenses of the Licensee within the Licensed Premises during the Licence Period as specified in Section 2.2.

In consideration of the Licensee agreeing to perform and discharge its obligations as set forth in this Agreement, the Licensor hereby grants to the Licensee, the right to enter upon, occupy and use the Licensed Premises for the purpose of implementing the Project and to provide Project Facilities in accordance with this Agreement and as provided for in Section 2.7.

2.2. Licence Period

I. Unless, otherwise provided for, the Licence granted herein will be for a period of 30 Years (including the time taken for construction of the Terminal) from the Zero Date (the "Licence Period").

II. Unless otherwise provided for, this Agreement shall become effective on the Zero Date and shall, subject to Termination under the provisions of this Agreement, be in force and effect until expiry of the Licence Period. The date of expiry of the Licence Period or early termination of this Agreement shall be the Scheduled Date of Transfer.

III. In the event of an early termination/determination of the Licence/ this Agreement by either Party in accordance with the provisions hereof, the Licence Period shall mean and be limited to the period commencing from the Zero Date and ending with the date of termination/determination/expiry of the Licence/this Agreement.

IV. On expiry/early termination/determination of the Licence Period, the Licence shall not be automatically renewed for a further period and the Project Facilities including the Terminal and Licensed Premises would revert back to the Licensor in accordance with the provisions of this Agreement.

V. This Licence does not bar the Licensee from participating in any subsequent bids invited by the Licensor for operation of the Terminal, subject to satisfactory performance by the Licensee during the Licence Period as appraised by the Licensor.

2.3. Covenants of the Licensor

The Licensor shall grant peaceful possession of the Licensed Premises as stated in Section 2.8.

2.4. Covenants of the Licensee

I. The Licensee shall make a non-refundable, irrecoverable payment of the Upfront Development Charge to the Licensor as described in Section 14 prior to any Handover of Licensed Premises and within 30 Days of issue of Letter of Intent

II. The Licensee shall make all payments to the Licensor as per the provisions of this Agreement.

2.5. Acceptance of the Licence

I. The Licensee hereby accepts the Licence and subject to the provisions of this Agreement, the Licensee shall at its costs, charges, expenses and risk including but not limited to foreign exchange risk if any, implement the Project and provide Project Facilities, in accordance with the provisions of this Agreement.

II. The Licensee hereby also agrees to transfer the Project Facilities as per the provisions of the Agreement.

2.6. Information about Licensed Premises

I. The information about the Licensed Premises as set out in Part-II of this Agreement is provided by the Licensor in good faith and with due regard to the matters for which such information is required by the Licensee. The Licensor agrees to provide to the Licensee, upon

a reasonable request any further information relating to the Licensed Premises, which the Licensor may now possess or may hereafter come to possess. Subject to this, the Licensor makes no representation and gives no warranty to the Licensee in respect of the condition of the Licensed Premises.

II. The Licensee agrees and confirms that it has thoroughly investigated and satisfied itself as to all general, local, marine, seawater, current, tidal waves conditions at the Licensed Premises and the areas and waters adjacent thereto including but not limited to topography, ground surface, sub-surface, seismic, shore, harbour, marine, seawater, seabed, hydrographic and bathymetric conditions and any other conditions as particularly described in Part-II of this Agreement; the nature and quantity of surface, subsurface and marine materials or obstacles to be encountered, and equipment, machinery and materials required by the Licensee prior to and during the performance of the obligations hereunder.

III. If any defect, discrepancy, error or deficiency in the information supplied by the Licensor is noticed at any time during the Licence Period, no claim on this account will be entertained by the Licensor including claim for extension of time for completing construction of the Terminal, nor the Licensor shall in any way be responsible for any loss or damage, if any, caused to the Licensee as a result thereof.

IV. Notwithstanding anything contained herein, it is expressly clarified that:

a) The Licensee is responsible for checking and verifying the data, reports and other information contained in Part II of this Agreement.

b) The said information is provided only for the convenience of the Licensee, the verification and interpretation of which is the sole responsibility of the Licensee.

c) The Licensor shall have no liability for adequacy, accuracy or completeness of such data and information.

d) The Licensee shall protect, indemnify and hold Licensor harmless for and against any and all losses arising directly or indirectly from or incurred by reason of the use of such data and information by any Person.

V Licensee hereby waives any claims it may otherwise have against any Person that has prepared, compiled or provided any such data and information.

2.7. Acceptance of the Licensed Premises

I The Licensor shall Handover the Licensed Premises to the Licensee as per the timeframe and description as stated in Appendix 4.

II. The Licensee shall accept possession of the Licensed Premises on 'as is where is' basis.

IIa It is expressly clarified that execution of a land licence agreement shall not be necessary for Handover. It is the Parties intention that the Lease Agreement shall be executed immediately upon Financial Close being achieved whereupon the land licence granted to the Licensee pursuant to the Handover shall terminate.

IIb In the case of failure of the Licensee to achieve Financial Close by 9/11/2005 or failure of the Licensee to execute the land Lease Agreement by 9/12/2005, the permission granted to the Licensee to enter upon, occupy and use First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises pursuant to Handover shall stand forthwith revoked. Provided where such delay after Financial Closure, is attributable to the Licensor, the land licence pursuant to Handover shall remain in force till the Licensor indicates readiness to execute the land Lease Agreement by written communication to the Licensee.

III. The Licensee shall, at its costs, charges and expenses, be entitled to make such development and improvements in the Licensed Premises as may be necessary or appropriate for implementing the Project provided always it is hereby mutually agreed as follows:

a) Pending execution of the Lease Agreement, the Licensee shall not at any time put up any construction over the Licensed Premises subsequent to Handover, except with the written permission of the Licensor.

b) If the Licensee puts up a construction without the written permission of the Licensor or before the execution of the Lease Agreement, the construction so put up shall become the property of the Licensor

c) If the Licensor does not require the construction so put by the Licensee without the permission of the Licensor or before the execution of the Lease Agreement, the Licensee shall remove the construction at the Licensee's cost and restore the Licensed Premises in as good a condition it was at the time the Licensee was put in possession, within a reasonable time, during the currency of the Licence, failing which, the Licensor shall have the right to remove the construction at the cost and expense of the Licensee

d) In the event of resumption by the Licensor of any of the Licensed Premises consequent to the early Termination of the Licence or any other reason, subsequent to Handover, the Licensor shall not be bound to pay any compensation whatsoever for repossession of the Licensed Premises including consequential possession of any development/construction on the Licensed Premises.

2.8. Peaceful possession

Except as otherwise provided in this Agreement, the Licensor warrants that the Licensor shall not, disturb the peaceful possession and enjoyment of the Licensed Premises by the Licensee during the Licence Period, subject to complying with the terms and conditions of this Agreement. In the event the Licensee is obstructed by any person claiming any right, title or interest in or over the Licensed Premises or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any person claiming to have charge on the Licensed Premises or any part thereof, the Licensor shall, if called upon by the Licensee, at Licensee's cost, defend such claims and proceedings.

2.9. Use of Licensed Premises

The Licensee shall not use the Licensed Premises for any purpose other than for the purposes of the Project and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Licensor.

2.10. Representations and warranties

The Licensee hereby represents and warrants to the Licensor that as of the date hereof:

a) it has the power and authority and has taken all actions necessary to validly execute and deliver this Agreement,

b) its obligations under this Agreement will be legally valid and binding and enforceable against it;

c) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement;

d) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required under the terms of any covenant, agreement, 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 and does not result in a violation of any Applicable Law;

e) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any relevant authority which may result

in any Material Adverse Effect on its ability to perform its obligations under this Agreement;

f) it has complied with Applicable Law 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 has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

g) it is a private company limited by shares incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation;

h) it is not engaged in any business other than the business of operating and managing ports and other ancillary activities; and

i) the shareholding pattern of the Licensee is as follows:

Parties	Percentage of Issued and paid up share capital of the Company
IMC Limited	74%
Larsen & Toubro Limited	26%

j) there are no actions, suits, proceedings, or investigations pending or, to its knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement, and

k) no sums, in cash or kind, have been paid to, or accepted by, any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise for entering into this Agreement.

3. Zero Date for Licence Period

I. The Licence Period shall commence from the later of:

a) the date of issue of the letter from the Licensor to the Licensee communicating receipt of Environmental Clearance;

b) the Handover Date of the First Required Part of the Licensed Premises as identified in Appendix 4.

II. This date would be called Zero Date.

III. In case of any delay in Handover of the Subsequent Parts of the Licensed Premises as per the schedule described in Appendix 4, the construction milestones referred to in the Project Schedule will be deferred by an equivalent period and the Licensee shall get day-for-day extension in the Licence Period for such equivalent period.

IV. If the delay continues beyond 180 days in Handover of the Subsequent Parts of the Licensed Premises as per the schedule described in Appendix 4, the Licensee shall be entitled to terminate the Agreement as per the provisions of the Section 19.3.

4. Independent Engineer

4.1. Duties of Independent Engineer

An Independent Engineer shall be appointed to carry out and perform the duties, services and responsibilities as described below and elsewhere in this Agreement.

I. Approval of Design and Drawings and report to the Licensor, any objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

II. Approval of DPR and report to the Licensor, objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

III. Ensuring that the provisions of the Design and Drawings and the Approved DPR do not adversely obstruct any development plans of the Licensor, as and if provided by the Licensor at the time of approval of the Design and Drawings and the Approved DPR.

IV. Upon request of the Licensee on completion of construction of the Terminal, carry out inspections to ensure that the Terminal has been constructed as per the provisions of this Agreement and the Approved DPR, and issue the Completion Certificate to the Licensee.

4.2. Appointment of and expenses on Independent Engineer

I. The Licensor shall within 20 Days from the date hereof or from the time both parties decide to appoint an Independent Engineer submit to the Licensee a panel consisting of at least three reputed organisations having necessary expertise for appointment as the Independent Engineer, to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Section 4.1 and elsewhere in this Agreement.

II. If the panel submitted by the Licensor is acceptable to the Licensee, the Licensee shall promptly and without delay inform the Licensor in writing the approval of the panel and the preferred choice of Independent Engineer.

III. The Licensor shall within 10 Days from the date of receipt of such approval, appoint the Independent Engineer from such panel, and communicate the same to the Licensee.

IV. In case of the Licensees disapproval of the panel, such disapproval shall be communicated promptly and not later than 10 (ten) Days from the submission of the panel by the Licensor in writing to the Licensor. The Licensor shall then submit another panel of three such organisations within 10 (ten) Days.

V. In case the Licensee is unable to identify the preferred choice of the Independent Engineer from either panels for any reason whatsoever or delays giving notice of approval or disapproval, then in such case, without prejudice to any other remedies and rights that the Licensor may have under this Agreement, the Licensor shall appoint the Independent Engineer from such panel and communicate the same to the Licensee.

VI. The costs and expenses of the Independent Engineer shall be paid by the Licensor.

VII. The Licensor may terminate the appointment of the Independent Engineer and appoint another Independent Engineer in its place in accordance with the provisions of this section or as may be mutually agreed

a) If the Licensor has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner

b) If the Independent Engineer resigns or notifies its intent not to continue as the Independent Engineer

VIII. In case of delays beyond 30 Days in reappointment of the Independent Engineer subsequent to termination of appointment as per Section 4.2 VII, the construction milestones referred to in

the Project Schedule will be deterred by an equivalent period and the Licensee shall get day-for-day extension in the Licence Period for such equivalent period.

IX. Initial term of the Independent Engineer will be 24 (twenty four) Months from appointment, and extendable by the Licensor if the Licensor deems it necessary.

5. Designs & Drawings

5.1. Preparation of Design and Drawings

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the Design and Drawings for the Terminal. The Licensee shall ensure preparation of Design and Drawings through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as set out in Part – II of this Agreement.

5.2. Review and approval of Design and Drawings

I. The Licensee shall submit the Design and Drawings in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor.

II. The Independent Engineer will review the Design and Drawings submitted by the Licensee, and communicate its approval to Licensee within thirty Days from the date of the receipt of such Design and Drawings and submit a copy to the Licensor

III. In the event that the Independent Engineer or the Licensor has any objection to the Designs and Drawings it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Independent Engineer and the Licensor and/ or re-submit the Design and Drawings as the case may be, after incorporating the changes, modifications or corrections suggested.

IV. If the Independent Engineer does not object to the Design and Drawings submitted to it by the Licensee within thirty Days of submission, the Independent Engineer shall be deemed to have approved such Design and Drawings and the Licensee shall be entitled to proceed with the Project accordingly.

V. The failure on the part of the Independent Engineer or the Licensor to object to the Design and Drawings shall not be construed as a waiver by the Licensor of any of its rights under this Agreement nor it shall in any way relieve and/or absolve the Licensee of its obligations and/or liabilities under this Agreement.

VI. The Licensee shall not be entitled to any extension of time for completing construction or to any other relief because of delay caused due to providing any clarification or in resubmitting the Design and Drawings.

VII. The Licensee shall not change any Design and Drawings approved or deemed to be approved by the Independent Engineer under this Agreement, without the prior written consent of the Independent Engineer and the Licensor.

VIII. Notwithstanding the express or deemed approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the Design and Drawings relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement.

IX. Any review of the Design and Drawings conducted by the Licensor/Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review, the Licensor/Independent Engineer does not accept any responsibility for the same.

X. The Licensee shall in no way represent to any Person, that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability, efficiency, safety and reliability of the Project or any part thereof agrees to indemnify the Licensor as provided for in Section 16.7.

6. Approved DPR

6.1. Preparation of DPR

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the DPR of the Project within six Months from the **Date of Award of Licence**. The DPR shall contain a Master Plan for the Terminal, traffic projections, tariff projections, technical detailing, detailed cost estimates, yearwise capital expenditure schedule, land requirement and utilisation plan, list of all assets, sources of finance, financing mix, management structure, personnel required, environmental impact mitigation plans, maintenance schedule and plan, equipment replacement plan and any other details specified by the Licensor or the Independent Engineer and/or as required under this Agreement. The Licensee shall ensure preparation of DPR through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as set out in Part – II of this Agreement.

6.2. Review and approval of DPR

I. The Licensee shall submit the DPR in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor

II. The Independent Engineer will review the DPR submitted by the Licensee, and communicate its approval to Licensee within thirty Days from the date of the receipt of such DPR and submit a copy to the Licensor.

III. In the event that the Independent Engineer or the Licensor has any objection to the DPR it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Independent Engineer and the Licensor and/ or re-submit the DPR as the case may be, after incorporating the changes, modifications or corrections suggested.

IV. If the Independent Engineer does not object to the DPR submitted to it by the Licensee within Thirty Days of submission, the Independent Engineer shall be deemed to have approved such DPR and the Licensee shall be entitled to proceed with the Project accordingly.

V. The Licensee shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR.

VI. The Licensee shall not change any DPR approved or deemed to be approved by the Independent Engineer under this Agreement, except as provided in Section 7.7.

VII. Notwithstanding the express or deemed approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the DPR relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement.

VIII. Any review of the DPR conducted by the Licensee's Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review, the Licensor/Independent Engineer does not accept any responsibility for the same

IX. The Licensee shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the commercial aspects or the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the commercial and technical feasibilities, operational capability, efficiency, safety and reliability of the Project or any part thereof and agrees to indemnify the Licensor as provided for in Section 16.7

7. Construction Phase

7.1. Construction Period

The Licensee shall promptly commence and complete the works in accordance with the Project Schedule and obtain from the Independent Engineer, a certificate as to completion of construction of the Terminal in accordance with the provisions of this Agreement (the **"Completion Certificate"**) not later than 24 months from the Zero Date (the **"Construction Period"**), except as approved by the Licensor.

7.2. Obligations of Licensee

The Licensee agrees and undertakes at its cost, charges and expenses to:

I. complete design, construction, erection, completion and development of the Terminal within 24 months from the Zero Date, subject to the provisions of Section 3 and in accordance with the Approved DPR and Design & Drawings;

II. undertake, at its own cost, charges and expenses, the work such as realignment of roads, electric poles, lighting towers, buildings or any other structures within the Licensed Premises which may be required in connection with the Project;

III. keep valid the Construction Guarantee as per Section 7.3;

IV. obtain and maintain all Applicable Permits required for the Project except those expressly falling within the scope of Licensor's obligations;

V entrust responsibility for project management and construction to professionally competent Persons;

VI. achieve Financial Close and make available in a timely manner all necessary financial and other resources required for implementation of the Project and provision of Project Facilities;

VII. comply with Applicable Laws including any obligations or duties mandated by any Applicable Permits including the Environment Clearance and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

VIII. provide to the representative(s) of the Licensor and/or the Independent Engineer, at reasonable times and upon prior intimation, access to the Project site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that failure on the part of the Licensor/Independent Engineer to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor/Independent Engineer nor shall the same be deemed to be waiver of any of the rights of the Licensor/Independent Engineer under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work;

IX promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure completion of construction of

the Terminal in all respects in accordance with the provisions of this Agreement, without reference to the Licensor for making changes in the commercial or other terms of this Agreement.

X. Within 90 days of the issue of Completion Certificate, the Licensee shall furnish to the Licensor 3 copies of the 'as built' Designs and Drawings duly vetted by the Independent Engineer reflecting the Project as actually designed, engineered and constructed, including without limitation an 'as built' survey illustrating the layout of the Project and setback lines, if any, of the building and structures forming part of the Project Facilities. The Licensee shall also provide the Licensor the total cost of construction of the project with break-up of the cost of each asset constructed/purchased duly certified by Statutory Auditors and also provide all technical information including technical manuals.

7.3. Construction Guarantee

I. The Licensee shall obtain and furnish to the Licensor a valid bank guarantee of Rs. 6,00,00,000/- (Indian Rupees Six Crore only) (the "**Construction Guarantee**") in favour of the Licensor enforceable and encashable at Chennai as per format in Appendix 5 from a scheduled bank acceptable to the Licensor on or before Zero Date and submit the same to the Licensor. The Construction Guarantee shall be valid from Zero Date until issue of Completion Certificate.

II. In case of delays in completion of construction as per the provisions of Section 7.1 & 7.2, the Licensee agrees to compensate the Licensor at the rate of Rs. 3,30,000/- (Indian Rupees Three Lakh and Thirty Thousand only) per Day for every Day of delay, or part thereof, payable on monthly basis, up to a period of 180 Days. The Licensor shall be entitled to recover such compensation through partial encashments of the Construction Guarantee.

III. In case the delay in completion of construction, as per the provisions of Section 7.2, is more than 180 Days, the Licensor shall be entitled to encash the balance Construction Guarantee and terminate this Agreement, without prejudice to any other remedies and rights that the Licensor may have under this Agreement.

IV. Clause Deleted

V The Parties agree that amounts described in Section 7.3 I, II and III are a fair and reasonable estimate of the loss and damage likely to be suffered by the affected Licensor. The Parties expressly agree that such sums are not to be construed as penalty clause.

VI. The decision of the Licensor as to any breach/delay having been committed, liability accrued, or loss or damage caused or suffered shall be conclusive, absolute and binding on the Licensee. The Licensee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Licensor under this Agreement is required to be provided in connection with any demand made by the Licensor to recover such compensation through encashment of the Construction Guarantee under this Agreement and that no document or any action shall be required other than the Licensors written demand as aforesaid notwithstanding any applicable law or regulation.

7.4. Right to appoint contractors

The Licensee may engage any Person possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project Facilities provided the Licensee shall at all times be solely responsible for non performance or for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement.

7.5. Equipment and materials

The Licensee is free to plan all constructional activities and back-up facilities connected with the proposed Terminal within the Licensed Premises. The Licensee shall provide or cause to be provided at its own cost, all necessary equipment, raw materials and other items that may be required for the construction of either temporary or permanent nature.

7.6. Project Schedule

The Licensee agrees and undertakes to perform its obligations under this Agreement in accordance with the Project Schedule set out in the Approved DPR.

7.7. Changes in Approved DPR and Design & Drawings

I. All construction shall be strictly in accordance with the Approved DPR and Design & Drawings. The Licensee shall intimate the Licensor in writing in case the Licensee proposes any material changes or deviations in the Approved DPR and Design & Drawings during any stages of development and construction or operation of the Project in the nature of:

A. changes in the physical structure that alters the basic design of the structure

B. variance in proposed quality standards/ specifications of assets

C. changes in the approved land use plan

II. Any change proposed by the Licensee in the Approved DPR and Design & Drawings shall be subject to the approval of the Licensor.

III. Consequent adjustment to the milestones if requested by the Licensee shall be subject to the prior approval of the Licensor. The Licensee shall implement the approved changes in conformity with this Agreement

7.8. Financial obligations of the Licensee

I. The Licensee shall implement the Project, construct the Terminal and provide Project Facilities entirely at its own costs, charges and expenses. Any increase in such costs, due to any reason whatsoever, including but not limited to cost overrun and/ or loss due to delayed construction and/or changes cost increases due to changes suggested by Independent Engineer and or Licensor, shall remain the sole responsibility of the Licensee. The Licensee agrees that this shall under no circumstances form the basis for any change or renegotiation in the commercial and or other terms of this Agreement with the Licensor

II. No extension of time for construction and commissioning of the Terminal due to delay in financing of the Project will be permitted by the Licensor except as approved by the Licensor and/ or if such delay is attributable to the Licensor's default.

7.9. No release

I. The Licensee agrees, declares and confirms that failure on the part of the Licensor to inspect any work

a) shall not amount to consent or approval by the Licensor nor the same shall be deemed to be waiver of any rights of the Licensor under this Agreement; and

b) shall not release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

II. The Licensor agrees that it shall not unreasonably delay or withhold any inspection requested by the Licensee for obtaining any approval and/ or consent of the Licensor required to be obtained under any provision of this Agreement.

7.10. Obligations of the Licensor

The Licensor undertakes to promptly grant, if due, approvals/ consents sought by the Licensee as required under this Agreement.

8. Supply of power, water and other utilities

The Licensee shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the Project. The Licensee shall be liable for all payments to the concerned parties for power, water and other utilities required for the Project during Construction Phase and Operation Phase.

9. Provision of land

I. The Licensee shall provide to the Licensor, details of the total land requirement for the Project in the Approved DPR. The location of such land requirement would be earmarked by the Licensor and communicated to the Licensee.

II. The Licensor shall provide land as specified in Section 9 I, conditional upon the Licensee entering into a Lease Agreement for such land prior to commencement of Commercial Operations.

III. In the event that the Licensee fails to enter into a Lease Agreement with the Licensor for the land as per provisions of Section 9 I and II, then,

a) the Licensor shall have the discretion to dispose of and/or allot such land in its possession, in respect of which, the Licensee has failed to enter into a Lease Agreement with the Licensor; and

b) the Licensee shall also forfeit its right to seek the lease of land as specified in Section 9.1 and/or any additional land beyond requirements.

IV. Notwithstanding the above, for avoidance of doubt, it may be clarified that Licensor shall in its sole discretion dispose of/allot for other purposes without reference to the Licensee

a) land in respect of which the Licensee has failed to enter into a Lease Agreement with the Licensor; and/or

b) any other lands not included in Section 9 I above.

V. Notwithstanding anything contained in this Agreement, for avoidance of doubt, it is clarified that the Licensor shall without reference to the Licensee,

a) be entitled to allot land for storage of any liquid cargo, to meet captive storage requirements of any user, where such user can assure a minimum annual throughput of 0.25 million metric tonnes at the berth and can assure creation of a minimum upfront storage capacity of 20,000 kilo litres.

b) be entitled to allot land to any user including but not limited to captive users, if any one or more of the conditions referred to in Section 15.1.3 I, II and III is met.

VI. For avoidance of doubt it is also clarified that disposal/allotment of land as per Section 9 IV and V above shall not be construed or deemed to be breach of the exclusivity provided to the Licensee as per provisions of Section 15.1.3 of this Agreement.

9.1. Provision of additional land

I. The reasonability of the request by the Licensee for lease of land in excess of land specified in the Approved DPR shall be assessed by the Licensor based on, *inter alia*, the track record of the Licensee in meeting the development milestones in the Approved DPR, extent of

development and commercial exploitation of land in possession of Licensee in accordance with terms of Lease Agreement, availability of land and the land use plan as modified from time to time by Ennore Port Ltd.

II. Lease of further lands will be granted as per prevailing Scale of Rates, at the sole option of the Licensor, upon the Licensee's timely achievement of the development milestones specified in the Approved DPR, subject to the availability of land, extent of development and commercial exploitation of land in possession of Licensee and the land use plan as modified from time to time by Ennore Port Ltd.

9.2. Non provision of land

I. For avoidance of doubt it is hereby clarified that no compensation whatsoever will be payable to the Licensee if as a consequence of the actions of the Licensor as per Section 9 IV, land requirements of the Licensee as specified in Section 9 I and II are not provided by the Licensor. Furthermore, it is hereby clarified that no compensation whatsoever shall be payable by the Licensor to the Licensee in the event land requirements of the Licensee pursuant to Section 9.1 are not provided by the Licensor for any reason.

10. Provision of transport infrastructure

10.1. Road infrastructure within boundary limits

I. The Licensor shall not be responsible for provisioning of any road infrastructure within the boundary limits of the Licensed Premises.

II. The Licensee is permitted to construct, operate and maintain road infrastructure within the boundary limits of the Licensed Premises and is allowed to charge tariffs, fees or levies for the same, as per applicable regulations

III The Licensee shall be responsible for relevant permits and approvals for construction, operations and maintenance of road facilities within boundary limits.

10.2. Pipeline infrastructure

I. The Licensee shall provide trestle and pipeline corridor of adequate capacity for meeting the evacuation requirements of the Terminal and as detailed in Part-II of this Agreement

II. The Licensee shall provide or cause to provide adequate number and sizes of pipelines for evacuation of cargo from berth to the storage area.

III. The Licensee shall be responsible for provision of manifolds and other accessories required for constructing and operating the pipelines.

IV. The Licensor shall not be responsible for provisioning of any pipeline infrastructure.

V. The right of way above, below and on the service road of the trestle and the 4m trestle width on the breakwater side shall always rest with the Licensor. During the validity of the License, in case of any future development of terminals requiring the use of right of way of the trestle, the Licensor shall compensate the Licensee for such right of way to the extent of 50% of the depreciated value of the approved cost of the trestle, where

a) depreciation of approved costs of the trestle shall be done on the straight line method over the entire Licence Period.

b) approved costs of the trestle shall comprise the actual capital costs of the trestle incurred by the Licensee subject to certification of the same by the Independent Engineer, at the time of issue of Completion Certificate, subject further to a maximum of Rupees Thirty Five Crores.

11. Operation and maintenance

11.1. Date of Commercial Operations

I. During the period of construction, the Licensee may inform the Licensor on completion of any material part of the jetty, mooring system, fendering system, approach trestle, pipelines, tankages and fire fighting system, that the Project Facilities are ready for declaration as a Landing and Shipping Place for cargo.

II. On receipt of such communication, the Licensor shall be entitled to verify that the Licensee has constructed the Terminal and developed the Project Facilities in accordance with this Agreement.

III The Licensor shall, if satisfied that the Licensee has constructed the facilities in accordance with this Agreement, submit an application, within one week of the date of completion of the inspection, to the Customs Department for the declaration of the Project Facilities as a Landing and Shipping Place as per Applicable Law at the costs and expenses of the Licensee.

IV. The Licensor shall obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and services as ready for operation at the costs and expenses of the Licensee

V. The Licensee shall promptly declare the Date of Commercial Operation and commence operations after complying with all requisite statutory obligations and any other obligations under this Agreement

VI. Commercial handling of cargo shall not be permitted at any time prior to the declared Date of Commercial Operations and any such handling will be treated as a Licensee event of default.

11.2. Obligations of the Licensee

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

11.2.1. Berth and Terminal operations

The Licensee shall:

I. promptly commence operations on the Date of Commercial Operation

II. make efforts to maximise cargo handled so as to achieve optimal utilisation of the Project Facilities;

III. make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project;

IV. obtain approval of the regulatory body, as applicable, for the tariffs, charges and levies, where required under Applicable Laws;

V. submit to the Licensor a copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

VI. in case of changes in tariffs, levies or charges, submit to the Licensor an updated copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

VII. manage and operate the Project Facilities on a common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;

VIII. ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and the revenue earned therefrom;

IX. comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour.

X. fully observe and comply with the Scale of Rates and the statement of conditions thereof as amended from time to time in respect of tariffs, charges and levies charged by the Licensor

XI. fully observe and comply with all the Provisions of the Indian Ports Act 1908 as amended from time to time bye-laws, rules and regulations made thereunder, any administrative or other directions and guidelines given under the said Act including guidelines on Land and Waterfront Management issued by any Government Authority from time to time, the Customs Act and all other statutory enactment in relation to the operations at the Project Facilities.

11.2.2. Repairs and maintenance

I. The Licensee shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities or part thereof, which may be lost, damaged, or destroyed.

II. The Licensee shall abide by the operations and maintenance plan ("Operations and Maintenance Plan") as outlined in the Approved DPR;

III. The Licensee shall maintain the Project Facilities in accordance with Good Industry Practices with the objective of providing adequate service standards and ensuring that the Project Facilities to be transferred to the Licensor on expiry of the Licence Period are in good condition, though normal wear and tear is excepted.

11.2.3. Removal/Replacement of assets

I. The Licensee shall at its cost plan for replacement of the equipment well ahead of the due dates therefor and replace the equipment as per the equipment replacement plan ("Equipment Replacement Plan") set out in the Approved DPR.

II. The Licensee shall not, without the prior approval of the Licensor, remove or replace any assets comprised in the Project Facilities.

11.2.4. Accounts, auditing and reports

I. Within five Days following the end of each Month, the Licensee shall provide to the Licensor monthly reports on cargo traffic, vessel traffic, tariffs charged, turnaround time and any other information relating to operations, which the Licensor may reasonably require. The Licensee shall also produce necessary books of accounts, vouchers, and any other information to the Licensor or its nominees or representatives, required for assessing/evaluating the Revenue Share.

II. On or before the fifth Day of the Month, the Licensee shall provide for the preceding Month a statement giving summarized ship/vessel/cargowise information on:

A. tonnage of cargo handled by category;

B tonnage of cargo stored by category;

C tariffs charged and the amount of fares received and all revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

D. Statement of all Gross Revenues accrued during the Month and the corresponding Revenue Share payment due to the Licensor, duly certified by the Licensee's Statutory Auditor

III. The Licensee shall during the subsistence of this Agreement, maintain full accounts of all revenue including other revenues derived/collected by it from and on account of use of the Project Facilities and shall provide

a) copies of half yearly accounts within 60 (sixty) Days of the end of the half year duly audited and certified by the Statutory Auditors of the Licensee and

b) in case of year end accounts, copies of audited annual accounts duly audited and certified by the Statutory Auditors of the Licensee under the Applicable Laws within 90 (ninety) Days of the close of each accounting period to which they pertain.

c) copies of the annual report including audited annual accounts duly certified by the Statutory Auditors of the Licensee under the Applicable Laws within 180 (one hundred and eighty) Days of the close of each accounting period to which they pertain,

IV. On or before the fifteenth Day of April each Year or fifteen Days from the close of the accounting period, whichever is earlier, the Licensee shall provide for the preceding accounting period a statement duly audited by its Statutory Auditors giving summarized ship/vessel/otherwise information on:

A. tonnage of cargo handled by category;

B. tonnage of cargo stored by category;

C. tariffs charged and the amount of rates received and all revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

D. Statement of all Gross Revenues accrued during the accounting period and the corresponding Revenue Share payment due to the Licensor, duly audited and certified by the Licensee's Statutory Auditor

E. Statutory Auditor's certificate that the Licensee has in place appropriate systems and procedures which are being followed for accounting revenues and these are not prejudicial to the interests of the Licensor under this Agreement

V Notwithstanding anything to the contrary contained in this Agreement, the Licensor shall have the right but not the obligation to appoint in the first instance at its cost another reputable firm of chartered accountants duly licensed to practice in India as the additional auditor (the "Additional Auditor") to audit and verify any or all matters, which the Statutory Auditors of the Licensee are required to do, undertake or certify pursuant to this Agreement including inter-alia revenues, expenses, costs, realisations and traffic.

VI The Additional Auditor shall undertake audits at any time, with prior notice of at least 3 Days, at the sole discretion of the Licensor without any limit on the number of audits that may be undertaken.

VII. In the event of there being any difference between the findings of the Additional Auditor and the certification provided by the Statutory Auditor of the Licensee, such auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved as per the provisions of Dispute Resolution procedure set in Section 24.

11.2.5. Employment of personnel

The Licensee shall employ qualified and skilled personnel required to operate the Project Facilities. The terms of employment may be as deemed fit by the Licensee and the Licensee shall bear all costs in this regard. All such employees shall always remain the Licensee's responsibility.

The Licensee shall indemnify the Licensor against any liability and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel during the Licence Period

11.2.6. Responsibility of the personnel on expiry of the Licence Period

On expiry of Licence Period or early termination, as the case may be, all the employees of the Licensee shall remain Licensee's liability, in all respects, including by payment of retrenchment

compensation, if any, payable to them under the law for the time being in force. The Licensor shall in no way be responsible for their employment. The Licensee agrees to indemnify the Licensor against any claim made by the Licensee's employees against the Licensor in respect of their employment or as a consequence of the termination of their services by the Licensee.

11.3. Rights of Licensee

11.3.1. Preferential and priority berthing/ousting

Berthing as far as practicable shall be on arriving priority. The Licensee may offer preferential or priority berthing/ousting to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities, provided the rules for the same, including payments if any in respect of such priorities are declared in advance to the Licensor and provided no waiting vessel is overlooked twice for such berthing priority. The Licensee shall also at all times comply with Government of India guidelines issued in this regard from time to time, and these shall have the overriding priority. For avoidance of doubt, it is hereby clarified that the channel access shall always remain with the Licensor.

11.3.2. Unclaimed cargo

The Licensee:

I. shall at its cost, after obtaining prior written approval of the Commissioner of Customs and in accordance with other Applicable Laws, destroy or dispose of by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by the Licensee under or pursuant to this Agreement, and

II. shall at its cost, charges and expenses institute proceedings for recovery of unrealised charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Licensor agrees to provide all reasonable assistance necessary in this regard to the Licensee

III shall be solely responsible for the loss, destruction or deterioration of such unclaimed cargo that it has taken charge

11.3.3. Right to sub-contract

I. Notwithstanding anything contained in this section, the Licensee shall at no point in time sub-licence, sub-concession the entire obligations under this Agreement

II. The Licensor may, for efficient use of the Terminal, grant approval to the Licensee to sub-contract certain operational, functional facilities and/ or maintenance of the Terminal or any part thereof. However grant of such approval shall not absolve the Licensee of any of its obligations and or liabilities under this Agreement and notwithstanding such approval the Licensee shall at all times remain responsible for its obligations under this Agreement.

III. Unless otherwise agreed to by the Licensor, sub-contracts, granted by the Licensee to third parties and long term commercial agreements entered into by the Licensee with third parties shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate at the end of the Licence Period.

IV. Unless otherwise agreed to by the Licensor, the Licensor shall not be liable for any costs whatsoever in relation to such subcontracts and long term commercial agreements entered into by the Licensee with third parties and/or as a result of the expiry or Termination of this Agreement.

11.4. Obligations of the Licensor

In addition to any of its other obligations in this Agreement, the Licensor shall arrange for and provide the following;

11.4.1. Marine and port services

The Licensor shall provide/ cause to provide the following services:

I. scheduling the entry, berthing and sailing of the vessels, bunkers and water supply to vessels and scheduling of pilotage and towage on a non-discriminatory basis subject to priority berthing norms set out in Section 11.5.1 and the sailing schedule as determined by the Deputy Conservator/Harbour Master of the Port depending on individual ship characteristics and safe navigational conditions. The Licensor shall be entitled to charge to the vessel owners/agents the tariffs, charges and levies for the services as per the provisions of Section 13;

II. maintenance of the entrance channel depth at - 16.0 m CD;

III. waterside safety and safety of navigation;

IV. maintenance of the dredged depth alongside the berth at - 14.0 m CD to - 15.0 m CD;

V. provision and maintenance of all general port infrastructure covered under the Licence, necessary for management, operation and maintenance of the Project Facilities.

VI. carry out capital or maintenance dredging operations, if any, that may be required to ensure the depths to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities;

11.4.2. Breach of Licensor's obligations

In the event of the Licensor's failure / breach in meeting obligations in Section 11.4.1, the Licensee shall, without prejudice to any other right or remedy available to it, be compensated by the Licensor for direct cost incurred to rectify the failure, if any, suffered by the Licensee on account of such failure / breach and substantiated by appropriate bills and proof of payments.

12. Ownership

12.1. Ownership of assets

12.1.1. Land and water area

The ownership of the Licensed Premises including all land, reclaimed area and water area shall remain with the Licensor and shall vest and/ or be deemed to vest with the Licensor at all times.

12.1.2. Assets created or provided by the Licensee

The ownership of all buildings, structures, berths, wharves, cargo handling equipment, other movable assets and other chattels situated on or above the Licensed Premises or relating to or connected with the Terminal, created or provided by the Licensee, shall, subject to the provisions of this Agreement, remain with the Licensee during the Licence Period.

12.2. Entitlements of the Licensee

i. The Licensee may hypothecate and/or create charge or and/or create other Encumbrances and/or mortgage the assets created or provided by the Licensee referred to in Section 12.1.2 for the limited purpose of offering such assets as collateral in favour of the Lenders for securing payments of interest/ repayments of principal of any loan advanced by such Lenders, subject to

appropriate documentation and the approval of the Licensor. Any such charge shall rank pari passu with charge of the Licensor over the said assets for recovering any amounts in respect of Revenue Share or any other charges outstanding to the Licensor.

II. Provided any hypothecation and/or charge and/or other Encumbrances and/or mortgage created by the Licensee beyond the Licence Period shall be null and void and shall not be binding on the Licensor and the said charge shall stand extinguished upon payment of Final Compensation Payable to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

III. Unless otherwise agreed to and approved by the Licensor, the Financing Documents shall not be inconsistent with the provisions of this Section 12.2 and other terms and conditions of this Agreement.

IV. The Licensor shall not enter into any direct agreement with the Lender for this Project for the purpose of securing the entitlements of Licensee and/or the Lenders.

13. Tariff Setting

I. The Licensor shall, render all vessel related services and shall collect port dues, pilotage fees and shifting charges, and any other vessel related charges except berth hire charges for the berth built by the Licensee, as per the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time directly from the ship's agents/users for use of the Terminal. It is hereby clarified that the Licensor shall set tariffs from time to time for all services rendered and facilities provided by the Licensor without reference to the Licensee.

II. The Licensee is free to fix and collect from users, the rates and user charges for the provision of the Project Facilities, including berth hire charges for the berth built by the Licensee, Cargo Handling Charges and other charges at the Terminal for cargo handling facilities and services in respect of all permitted cargoes under the Agreement, but subject to the approval by the Regulatory Authority or any other Person, if any, appointed by the Government from time to time. Any future regulation relating to any rates, charges and tariffs would have to be adhered to by the Licensee, if applicable and would not be tantamount to Change in Law.

III. A comprehensive schedule of all rates and user charges for the Project Facilities and the time period from which such rates and user charges including the terms and conditions thereof, shall be in effect, shall be notified to the public by the Licensee.

IV. Every fixation and revision in such rates and user charges including the terms and conditions thereof shall be intimated to the Licensor and notified at the Port at least a Month before the fixation and revisions come into effect.

V. Such rates and user charges including the terms and conditions thereof and any revisions thereof shall be the Published Tariffs.

VI. All such tariffs, rates and user charges shall be denominated in US Dollars and/or Indian Rupee.

VII. The Licensee shall be free to give discounts in tariff and any other rates and user charges, including separate service and tariff packages for specific users. Such customization may include long-term contracts with large and/or dedicated users. However, such discounts shall be given by the Licensee only in respect of the tariffs, rates and user charges due and payable by the users, consignees/ owners or vessel owners/ agents to the Licensee and not in respect of the tariff and any other charges payable by such Persons to the Licensor.

VIII. For the purpose of calculating Gross Revenue and Revenue Share payable, the maximum among the following shall be taken:

A. the actual charges levied by the Licensee or its sub-contractors for the services provided within the scope of this Agreement

B. the tariff specified by the Regulatory Authority or any other statutory body or any other Person

C. the Published Tariffs as applicable and revised from time to time

IX. Any discounts/rebates/concessions in tariffs, rates and user charges shall not affect the Revenue Share payable to the Licensor and the revenues accrued to the Licensee shall be grossed up by such discounts/rebates/concessions for calculation of Gross Revenues

13.1. Regulation and review

The Licensee may at any time, apply for revision of tariff to be charged and recovered by it to the Regulatory Authority or any other appropriate Person as per the rules and regulations from time to time.

13.2. Traffic projections

The Licensee shall submit annual and monthly traffic projections to the Licensor at the start of each year. The Licensee shall submit monthly and annual traffic reports and annual variance of actual traffic against annual projections and estimates envisaged in the Approved DPR.

14. Payments to the Licensor

The Licensee shall pay to the Licensor by demand draft payable in Chennai drawn on a scheduled bank in favour of Licensor, the following amounts:

I. Upfront Development Charge of Rs. 4,00,00,000/- (Indian Rupees Four Crore only) within 30 days from the issue of Letter of Intent.

II. On an annual basis, from the day the Licensee first provides cargo handling services to users of the Terminal (which may be before the Date of Commercial Operation) or from the Date of Commercial Operation, whichever is earlier, the Licensee shall be liable to pay to the Licensor the higher of the following amounts

a) the Revenue Share

b) the Minimum Annual Guaranteed Revenue for that respective year of Commercial Operations as provided in Appendix II

This amount shall be payable in monthly instalments in the manner provided in Sections II III IV and V below.

III. On the 5th of every Month the Licensee shall pay Revenue Share for the previous Month's throughput, as per the provisions of the Negotiable Instruments Act. Such Revenue Share shall be the amount equal to product of the value quoted in the commercial proposal of the Licensee, provided in Appendix 6 and the Gross Revenues accrued for the Month to the Licensee as a result of operations of the Project and Project Facilities based on Section II.2.4 II.

IV. For every year of Commercial Operations, at the end of the first six Months, along with the seventh Month's Revenue Share, the Licensee shall pay to the Licensor the difference in Revenue Share for the six Month period and the pro rated share of Minimum Annual Guaranteed Revenue, in case such Revenue Share is less than pro rated share of Minimum Annual Guaranteed Revenue;

V. In case the Revenue Share for the first six Month period is greater than the pro rated share of Minimum Annual Guaranteed Revenue such that the Licensee has paid to the Licensor an amount (the "**Credit Amount**") by which the Revenue Share for the six Month period is

greater than the pro rated share of Termination Annual Guaranteed Revenue, then such Credit Amount, shall be adjusted in the following Six Months of that year of Commercial Operations such that on an annual basis, the higher of the annual Revenue Share and the Minimum Annual Guaranteed Revenue for such year is paid by the Licensee to the Licensor. It is hereby clarified that no unadjusted Credit Amount remaining in any year of Commercial Operations shall be carried forward to subsequent years.

VI. The Gross Revenue accrued shall be calculated as provided for in Section 13 VIII and IX and shall be aggregate of the following revenues whether or not such revenues are actually realized from consignees/agents/customers:

a) all the gross revenues accruing to the Licensee for the services rendered and facilities provided by the Licensee including revenues accruing from berth hire charges for the berth built by the Licensee.

b) all the gross revenues accruing to the Licensee from handling, wharfage, storage, tank hire, and movement of cargo including transhipment

c) all the gross revenues accruing to the Licensee from shifting of cargo within the Terminal for inspection, processing, storage, tank hire or loading/unloading

d) all the gross revenues and income from storage, tank hire charges and demurrage/detention charges

e) all the gross revenues and income from miscellaneous services offered and facilities provided within the Terminal

f) all other gross revenues and income from charges not specified above, if any, for handling, storage, tank hire and movement of cargo within the Terminal

g) any other gross revenues and income earned by the Licensee not specified above and directly attributable to the Project and Project Facilities, provided that any income earned from investing surplus funds and from investments not directly related to the Project would be excluded from the computation of accrued revenue.

VII. All Revenue Share payments payable by the Licensee shall be payable in the currency of invoice raised on users of the Terminal, irrespective of the same being converted into Indian Rupees by the Licensee or any other Person.

VIII. From the Handover Date of the Licensed Premises till the date of signing of the Lease Agreement, land licence fee shall be payable by the Licensee to the Licensor. The payment of land licence fee will be made on the 5th of every Month for the Month. Land licence fee for the land in the Licensed Premises shall be calculated at a rate of Rs 40 per annum or part thereof per square meter or part thereof. It is expressly clarified that execution of a land licence agreement shall not be necessary for Handover.

IX. Upon the achievement of Financial Close, Parties shall execute the Lease Agreement. Land lease rentals, security deposit and lease premium for the Licensed Premises given to the Licensee for undertaking the Project shall be payable by the Licensee at the rate and schedule specified in the Lease Agreement in Appendix 8 and calculated from the date of the Lease Agreement. The land lease rentals shall be payable at monthly intervals in advance for the following Month on the 5th of every Month

X. The Licensee shall also pay rent or other charges for the additional land or other premises or additional utilities or services made available by the Licensor to the Licensee in accordance with the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time.

XI. The Licensee and/or the users of the Terminal shall pay to the Licensor, wayleave charges as specified below, which shall be escalated at 10% after every five (5) years

a) For pipelines of 200 mm diameter and above: Rs 80 per running meter or part thereof /per calendar year or part thereof

b) For pipelines lesser than 200 mm diameter: Rs 40 per running meter or part thereof /per calendar year or part thereof

14.1. Payment Guarantee

I. As security for payment of the Revenue Share and all other claims and payments due and payable to the Licensor under this Agreement, the Licensee shall execute and keep in force through out the Operations Phase, a bank guarantee (the "Payment Guarantee") enforceable and encashable at Chennai from a scheduled bank acceptable to the Licensor (on or before the Date of Commercial Operations) in favour of the Licensor.

II. The value of bank guarantee for the first 180 Days of Commercial Operations shall be 1/2 (One part in two) of the Minimum Annual Guaranteed Revenue for the first year of Commercial Operations as provided in Appendix II and shall be equal to Rs 1,25,00,000 (Rupees One Crore and Twenty Five Lakhs only).

III. Thereafter the bank guarantee amount shall be equal to the maximum of

a) previous six Months Revenue Share calculated as the sum of the payments for each Month computed as per Section 14.III for the previous six Months, such that

i) US Dollar denominated payments shall be converted to equivalent Indian Rupees based on the prevailing SBI TT rate on the last working day of the respective Month

b) 1/2 (One part in two) of the Minimum Annual Guaranteed Revenue for that respective year of Commercial Operations as provided in Appendix II

14.2. Failure to pay

I. The Payment Guarantee may be invoked at any time after the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor remain unpaid. Within 10 Days of such invocation of Payment Guarantee, the Licensee shall replenish the Payment Guarantee.

II Non-provision and/or non-replenishment of the Payment Guarantee by the Licensee shall entitle the Licensor to invoke and encash the entire balance amount of the Payment Guarantee and such default shall be considered a Licensee Event of Default.

III The Licensor shall levy simple interest at the rate of 15% per annum to the Licensee on every delayed payment of the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor, provided such delayed payment shall not be allowed by the Licensor for a period exceeding three Months. In case of delay beyond three Months, Licensor shall treat such event as a Licensee Event of Default. The interest shall be charged from the date on which such amount becomes payable to the Licensor under this Agreement.

15. General obligations

15.1. Obligations of the Licensor

15.1.1. Assistance for approvals, permits, licenses and clearances

The Licensor shall at the request and costs, charges and expenses of the Licensee do all such acts, deeds and things that the Licensee may require to be done jointly or individually with respect to any applications or clearances sought and/or received from any authority for any issues pertaining to the Project the requirements of the Licensor becoming necessary or essential by virtue of its ownership of land and water. The Licensor's obligation under this

Section 15.1.1 shall not relieve the Licensee of its obligation under this Agreement to obtain and renew the required approvals, clearances and permits.

15.1.2. Non-Interference

Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the designing, engineering, financing, construction, operation, maintenance and marketing of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal.

15.1.3. Exclusivity rights

The Licensor agrees that it shall commission / grant concession to any other party to commission additional common-user facilities for handling liquid cargo other than the excluded cargoes as specified in Section 15.2.6 at Ennore Port if and only if any one or more of the following takes place:

I. the Terminal achieves throughput of 2.10 Million Metric Tonnes per annum for a consecutive period of three accounting years of the Licensee or completes 7 calendar years of Commercial Operations, whichever is earlier; or

II. Licensee's failure to accede to requests from the Licensor to upgrade the existing capacity to ensure higher throughput, provided such demand is reasonably justifiable in the opinion of Experts; or

III. the Terminal is operated as a dedicated user facility and is not available to other users for handling similar type of cargo.

The Licensor agrees that wherever temporary facilities for handling liquid cargo at Ennore Port are prevalent, the Licensor will not permit such operations during the Operations Phase, provided the Licensee satisfies the Licensor of his ability to service such cargos.

15.1.4. Exemption of Revenue Share

No Revenue Share shall be claimed and levied by the Licensor on items / equipment brought in for the purpose of setting up of the proposed Terminal through the Licensed Premises by the Licensee until commissioning of the Terminal. Also Revenue Share shall not be claimed and levied for any equipment / machinery brought in by the Licensee for the purpose of maintenance / augmentation of the Terminal after the commissioning thereof till the expiry of the Licence Period through the Terminal.

15.2. Obligations of the Licensee

15.2.1. Safety and security measures

I. The Licensee shall give priority to safety in its planning, development, construction, and operations of the Terminal in order to protect life, health, property and environment.

II. The Licensee shall follow all safety norms as prescribed by the competent authority.

III. The Licensee shall within 24 hours of the occurrence of any accidents at or about the site or in connection with the execution of the work including its employees / workmen shall report such accidents to the Licensor. The Licensee shall also report such accidents to the competent authorities such as Labour Department (Regional Labour Commissioner), Police Department, Harbour Master, and other relevant authorities, etc. to whom such report is required to be legally submitted

IV. The Licensor's Port is an area with restricted entry. The entry / exit of materials and personnel of the Licensee and their passage within the Port area is subject to the Port's safety and security regulations as in force from time to time.

v The Licensee at its cost may make its own arrangements for security in the Licensed Premises provided the Licensee shall abide by the security regulations/ procedures prescribed by the Licensor from time to time. However, the overall security of the Port property shall be the responsibility of the Licensor.

15.2.2. Shareholding

I. The Licensee shall ensure that,

a) the aggregate equity shareholding of the Consortium Members in the Licensee will at no point in time be less than 51% till the issue of Completion Certificate.

b) the Lead Consortium Member (LCM), whose financial strengths were credited during the bid process, holds an equity stake of not less than 26% in the Licensee at least for a period of 5 calendar years from the Date of Commercial Operations.

c) in the event of a Significant Consortium Member (SCM), whose strengths were credited for financial evaluation, such Significant Consortium Member will continue to maintain an equity stake of not less than 26% in the Licensee till the issue of Completion Certificate.

d) in the event of the Consortium Member whose strengths were credited for technical evaluation, such Consortium Member will continue to maintain an equity stake of not less than 11% in the Licensee for a period not less than 3 calendar years from the Date of Commercial Operations.

e) the equity shareholding in the Licensee of the Consortium Members, whose strengths were credited during the bid process will at no point in time be less than 51% till at least 5 calendar years from the Date of Commercial Operations

II. Any change in equity stake of such a Lead Consortium Member, Significant Consortium Member, Consortium Member, and making an "Public Offer" shall be communicated to the Licensor in writing for its prior approval. The Licensor shall reserve the right to disallow changes in Consortium structure, if in its opinion it adversely affects the strengths of the Licensee (the Consortium) as originally evaluated. Any such change without Licensor's prior approval shall constitute a Licensee Event of Default.

III. The Licensee shall ensure that

a) its articles of association ("Articles") adequately reflect the relevant commitments, obligations and responsibilities of the Consortium as contained in the MoU, the bid documents and as envisaged in this Agreement.

b) in particular, the Articles of the Licensee shall be amended within forty-five (45) days from the date hereof to include:

i) terms and conditions regarding the composition of share-holding stipulated in this Agreement, and

ii) terms and conditions related to changes in the share-holding pattern stipulated in this Agreement

c) the Licensee shall submit the amended Articles to the Licensor as soon as may be reasonably possible.

d) Any subsequent change in the Articles which alter the provisions required by this sub-clause shall require the prior approval of the Licensor

IV. The Licensee shall provide on an annual basis to the Licensor, a certificate of the Licensee's compliance with the provisions of Section 15.2.2 and this shall be issued by a practising Company Secretary

15.2.3. Submission of Financing Documents

I. The Licensee shall submit the Financing Documents, if any, from time to time for the approval of the Licensor.

Ia The Licensee shall ensure that the Financing Documents obligate the Lenders to promptly notify the Licensor of event of default by the Licensee under the Financing Documents.

II. The Licensor shall review the Financing Documents submitted by the Licensee, and communicate its approval to the Licensee within forty five Days from the date of the receipt of such Financing Documents.

III. In the event that the Licensor has any objection to the financing structure or Financing Documents or sources of finance it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Licensor and/ or re-submit the Financing Documents as the case may be, after incorporating the changes, modifications or corrections suggested.

IV. If the Licensor does not object to the financing structure or Financing Documents submitted to it by the Licensee within forty-five Days of submission, the Licensor shall be deemed to have approved such financing structure and the Financing Documents.

V. Where consideration payable to the Licensee on Termination is based on debt and/or equity, only the sources of funding and repayment schedule ("Original Schedule") as approved by the Licensor and as appended in Appendix 7 would be considered in estimation of such compensation.

15.2.4. Environmental protection

I. The Licensee shall be fully responsible to ensure that the environment in general, and the water area in particular, is not polluted due to the operations of the Terminal. All Applicable Laws in this connection shall be fully adhered to by the Licensee as per Good Industry Practices. The Licensee shall give clear indications about the disposal arrangements for chemical wastes and other wastes at the stage of approval of layout drawings etc. The Licensee shall be solely responsible to obtain all statutory clearances as may be required by law, excepting the Environmental Clearance, which shall be the Licensors responsibility.

II. The Licensor will provide assistance to the extent possible in this regard. However, this will not be obligatory on the Licensor, and the Licensee shall take full responsibility for obtaining the necessary clearance. The Licensee agrees and undertakes to comply with other regulations and directives concerning occupational hazards as issued by the Licensor and relevant authorities from time to time. The Licensee shall keep the Licensor informed by sending a copy of the clearances obtained from time to time.



15.2.5. Permits

The Licensee shall at all time maintain valid Permits or licences that may be required for construction and operation of the Terminal. The Licensee at its cost shall obtain such Permits or licences from the concerned Government Authority.

15.2.6. Cargo restrictions

It is the responsibility of the Licensee to ensure that, except for the cargoes required for the construction of the Terminal and other liquid cargo, any dry cargo, containers and LNG is not handled at the Terminal.

15.2.7. Expansions

Any expansions outside the scope of the Approved DPR shall be subject to the prior approval of the Licensor.

15.2.8. Insurance

The Licensee shall, at its cost and expense, purchase and maintain during the Licence period such insurances, from highly rated insurance carriers acceptable to Licensor, as are necessary, including but not limited to the following:

15.2.8.1. Construction Phase

Prior to commencement of any construction, the Licensee shall, at its cost and expense, purchase and maintain during the Construction Phase such insurances as are necessary, including but not limited to the following:

I. builders all risk insurance;

II. comprehensive third party liability insurance including injury or death to personnel of the Licensor and others who may enter the Licensed Premises;

III. workmen's compensation insurance;

IV. marine cum storage cum erection insurance;

V. any other insurance that may be necessary to protect the Licensee, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in Items (I) to (IV)

15.2.8.2. Operations Phase

Prior to commencement of Commercial Operations, the Licensee shall, at its cost and expense, purchase and maintain during the Operations Phase insurance to cover against:

I. loss, damage or destruction of the Project Facilities at replacement value;

II. the Licensee's general liability arising out of the Licence including coverage for products and completed operations and blanket contractual liability for obligation of Licensee to Licensor under this Agreement;

III. liability to third parties;

IV. terminal operators liability with errors and omissions coverage; and

V. any other insurance that may be necessary to protect the Licensee and its employees, including all Force Majeure Events that are insurable and not otherwise covered in Items (I) to (IV).

15.2.8.3. Insurance companies

The Licensee shall insure all insurable assets comprised in the Licensed Premises and/or the Project Facilities through Indian insurance companies and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be effected with them.

15.2.8.4. Evidence of insurance cover

Copies of all insurance policy(ies) (or appropriate endorsements, certifications or other satisfactory evidence of insurance) shall be delivered to the Licensor by the Licensee.

15.2.8.5. Application of insurance proceeds

Subject to the provisions of this Agreement, all moneys received under any such policy(ies) shall be promptly applied by Licensee towards repair or recovering or restoration or substitution of Terminal or any part thereof, which may have been damaged or destroyed. The

Licensee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Terminal or any part thereof, shall, after such repair or renovation or restoration or substitution be in nearly the same or as good condition as it was before such damage or destruction. The Licensee shall proceed with such repair or renovation or restoration or substitution work as soon as reasonably possible after such damage / destruction irrespective of whether it has received its insurance claims or not.

15.2.8.6. Validity of the insurance cover

The Licensee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Licence Period, and furnish copies of the same to the Licensor.

15.2.8.7. Remedy on failure to insure

If at any time the Licensee fails to procure or maintain in full force and effect any and all of insurances required under this Agreement, the Licensor may at its option procure and/ or maintain such insurance and all sums incurred by the Licensor thereof shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the Licensor by encashing the Construction/ Payment Guarantee. Failure by the Licensee to obtain the insurance coverage or certificates of insurance required pursuant to this Section 15.2.8 shall not relieve the Licensee of all or any of its obligations herein or in any way relieve or limit the Licensee's obligations or liabilities under any other provisions of this Agreement.

15.2.8.8. Endorsements

All insurance policies supplied/procured by the Licensee shall include a primary and non contributing endorsement. The general liability insurance shall name the Licensor as the additional insured, and shall include appropriate cross liability clauses as required by the Licensor. The insurance policies shall also include a provision whereby the insurance carrier is required to provide, directly to the Licensor, thirty (30) days advance written notice before termination, change or cancellation of coverage takes effect for such policies, regardless of whether cancelled by the Licensee, insured or the insurance carrier.

15.2.8.9. Waiver of subrogation

All insurance policies supplied/procured by the Licensee shall include a waiver of any right of subrogation of the insurers there under against, Licensor, and its assigns, subsidiaries, affiliates, employees, other insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy.

15.2.8.10. Exclusion

Where this Agreement provides for remedies and/or compensations for any event due account shall be taken for remedies customarily available and/or then available through insurance and/or reinsurance covering damages related to such event. No compensation shall be paid for losses that should have been insured, but were not adequately insured by the Licensee.

15.2.9. Assignability

i. The Licensee shall not assign or transfer all or any of its obligations or liabilities under this Agreement, or its interest in the Project assets except to the Lenders financing the Project.

ii. The right of the Lenders, upon assignment of the rights and obligations under this Agreement or interest in the Project assets, to substitute the Licensee shall be subject to the approval of the Licensor as regards the identity of the transferee and the provisions of Section 19.3.7 shall apply, mutatis mutandis.

III. Any transfer of interest in the Project assets by sub-contracts shall be subject to the prior approval of the Licensor as regards the identity of the transferee and the provisions of Section 19.3.7 shall apply, mutatis mutandis

IV. In the event of the such assets reverting to the Licensor at the time of transfer consequent to expiry of the Licence by efflux of time or on Termination of this Agreement, the Licensee shall ensure that all existing charges and Encumbrances in respect of such assets, are extinguished prior to the payment of Final Compensation Payable and that the Licensor shall enjoy peaceful possession failing which the Licensor shall have the right to invoke any outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement .

15.2.10. Transfer of technology and know-how

The Licensee agrees and undertakes to transfer free of cost all technology and up-to-date know-how, wherever applicable, to design, construct, operate, manage, maintain and market the Terminal to the Licensor and the Licensee shall not claim any fees or charges for such transfer.

At least six Months before the Scheduled Date of Transfer or on issue of Termination Notice, the designated key personnel of the Licensor shall be associated with the operations and shall be trained by relevant personnel of the Licensee at the Port to facilitate smooth transfer to the Licensor.

15.2.11. Avoidance of damage to properties

The Licensee shall take all precautions whilst carrying out the contract work against any possible damage to any property of the Licensor within the Licensed Premises. Should any such damage be done by the Licensee, it shall make good or bear the cost of making good the same, when brought to its notice without delay to the satisfaction of the Licensor

15.2.12. Inspection

I. The Licensee shall ensure unhindered access and offer necessary co-operation to the Licensor or its representatives for monitoring and inspection of construction activities.

II. The Licensee shall allow the Licensor and/or its nominees and/or its agents to inspect the construction, development and operations of the Terminal at reasonable times and on prior intimation, access to the Project site to review the progress and to ascertain compliance with any of the requirements of this agreement.

III. Provided that failure on the part of the Licensor to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor nor shall the same be deemed to be waiver of any of the rights of the Licensor under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work/responsibility.

15.2.13. Condition survey

I. The Licensee agrees that six Months before the expiry, by efflux of time, of the Licence Period it shall, cause to be conducted at its cost by an Expert, to be appointed in consultation with the Licensor a condition survey and an inventory of the entire Licensed Premises, Terminal and Project Facilities. If, as a result of such survey, the Expert shall observe / notice that the Licensed Premises and or the Project Facilities or and/or the Terminal and/or any part thereof have / has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and

expenses, take all necessary steps to put the same in good working condition well before the Scheduled Date of Transfer.

II. In the event the Licensee fails to comply with this provision, the Licensor may itself cause the condition survey and inventory of the Licensed Premises and Project Facilities including the Terminal to be conducted and remove any defect or deficiency. The Licensor shall be promptly reimbursed by the Licensee for the costs incurred in conducting such survey and preparation of inventory as also in putting the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof in a good working condition, failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

15.2.14. Maintenance Guarantee

I. Two years prior to the expiry of the Licence, the Licensee shall as security for performance of its obligation referred to Section 11.2.2 and other obligations under this Agreement, execute and keep valid till one year after the end of the Licence Period, a bank guarantee enforceable and encashable at Chennai in favour of the Licensor issued by a scheduled bank acceptable to the Licensor for a sum of Rupees equal to 2% of the Project cost indexed to the annual WPI index published by the Office of the Economic Advisor, the Ministry of Commerce and Industry, Government of India from time to time. The project cost shall mean the Gross Block of the Licensee on the Date of signing the Maintenance Guarantee or on the last Date of the immediate preceding accounting year

II. In the event of Licensee's failure to provide such Guarantee, the same shall be deemed to be a Licensee Event of Default and the Licensor shall accordingly be entitled to terminate this Agreement in accordance with Section 19.

15.2.15. Performance standards

The Licensor may appoint a committee of its representative and/or independent experts to assess the performance of the Terminal, at its own cost, and publish a periodic report for the information of port users.

15.2.16. Interaction of the Licensee with Licensor

I In addition to the information detailed elsewhere in this Agreement, the Licensee shall submit to the Licensor:

a) Bi-annual reports on the compliance with the agreed maintenance standards and replacement schedule for assets

b) Monthly reports on commodity wise traffic;

c) Six monthly reports on the third parties operating in the Terminal including the sub-contractors, sub-lessees and users with long term contracts;

d) Sub-contractors, sub-lessees and users with long term contracts;

e) Vessel movement reports as may be directed by the Licensor.

II. The Licensee shall provide information on traffic performance statistics of the Project Facility from time to time as may be required by the Licensor in the formats specified

III. The Licensee shall provide any additional information as the Licensor may require to ensure that the Licensee is in compliance with the terms of this Agreement.

16. Obligations and rights common to Licensor and Licensee

16.1. Compliance with laws and regulations

The Parties shall at all times perform its obligations under this Agreement in accordance with the existing law and shall at all times observe and comply with all relevant existing and Applicable Laws.

16.2. No hindrance

I. The Licensor shall take adequate care to ensure that construction / development and operation of the Port will not adversely affect or cause hindrance to the construction / development and operation of the Terminal.

II. The Licensee shall take adequate care to ensure that construction / development and operation of the Terminal and other facilities will not adversely affect or cause any hindrance to any other construction / development or operation of the Port.

16.3. Taxes, customs duties and charges

I. The Parties agree and undertake that during the Licence Period it shall pay all taxes, duties, levies, cess, assessment charges including but not limited to income or corporate taxes that may be levied, claimed or demanded from time to time from the respective Parties by any Government Authority or any other statutory body or corporation under any law, statute or any amendments to existing laws and statutes in respect of or in connection with the Terminal.

II. The Licensee shall ascertain tax benefits and / or concessions available for the Licensee for investing in the Project. The Licensor may issue recommendatory letters, if required, as per procedure. The responsibility for getting any notification issued by any Government Authority for any benefits and / or concessions in taxes and / or customs duties and / or charges shall rest with the Licensee.

16.4. Responsibility for employees

The Parties shall be solely responsible for any acts or labour unrest by its respective employees or its agents / its contractors and the respective parties shall be solely liable for any loss / damage caused to the Licensee due to such acts or labour unrest.

16.5. Rights to documents

16.5.1. Licensor documents

Documents and computer programs or copies thereof, if any, provided by the Licensor to the Licensee, shall remain the property of the Licensor. The Licensee shall not use such documents, computer programs and / or copies for the purposes other than for the Project. The Licensee thereof shall return such documents, computer programs and / or copies to the Licensor on the expiry of the Licence Period or early Termination of this Agreement, unless otherwise agreed upon between the Licensor and the Licensee.

16.5.2. Licensee documents

Documents and computer programs of the Licensee which are developed for operation and / or maintenance of the Project, if any, shall be handed over by the Licensee to the Licensor free of cost at the expiry of the Licence Period or early Termination of this Agreement. All copyrights, intellectual property rights and other rights in such documents and programs shall

vest exclusively with the Licensor and the Licensee shall not have any right to use them after expiry of Licence Period.

16.6. Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either Party or its agents which are not otherwise publicly available must be kept confidential and not disclosed to third parties or the public without the prior written approval of the other Party except as required by law or pursuant to this Agreement. This covenant shall survive on expiry of Licence Period or early Termination as the case may be, of this Agreement.

16.7. Indemnification

I. The Licensee hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensor, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belonging to the Licensor, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Licensee or as a result of failure on the part of the Licensee to perform any of its obligations under this Agreement or on the Licensee committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensee to perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensee to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensee or its contractor(s) and / or sub-contractors and / or invitees as the case may be, in connection with or arising out of this Agreement and / or arising out of or in connection with Licensee's use and occupation of Licensed Premises and / or Terminal

II. In addition, the Licensee also agrees to indemnify the Licensor, its agents and employees in respect of all cost and expenses incurred by it in prosecuting or defending any action or suit (civil or criminal) by any third party which the Licensor, its agents and employees is forced to initiate to protect its interest or forced to defend in connection with or arising out of this Agreement.

III. The Licensee shall comply with all Applicable Laws in accordance with the obligations of the Licensee under this Agreement. The Licensee shall be liable for and shall defend, hold harmless and indemnify the Licensor against all losses, claims and costs arising out of the Licensee's performance of the Agreement, breach of the Agreement, claims of personnel, claims of users in the event of disruption in service caused due to berthing directives and claims of third parties in the nature of lessees, sub lessees, construction contractors, subcontractors for services and other such parties (unless otherwise provided for in this Agreement).

IV. The Licensor hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensee, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belong to the Licensee, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Licensor or as a result of failure on the part of the Licensor to perform any of its obligations under this Agreement or on the Licensor committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensor to

perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensor to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensor or its contractor(s), sub-contractor(s), invitees or employees, servants, agents of such contractor(s) and / or sub-contractor(s) and / or invitees as the case may be, in connection with or arising out of this Agreement.

V. Without prejudice to Section 17, 18 and 19, neither Party shall be liable to the other Party for any indirect, consequential, incidental, punitive or exemplary damages or for loss of profit, consequential financial or economic loss or any disruption in the flow of traffic into the Terminal for any reason whatsoever.

16.8. Obligation to co-operate

The Parties shall mutually co-operate with each other in order to achieve the objectives of this Agreement.

17. Change in Law

17.1. Change in Law

I. "Change in Law" means the occurrence of any of the following events on or after the Date of Bid Submission which has a Material Adverse Effect:

A. enactment of any new Law except to the extent such Law was enacted prior to the Bid Submission Date and such Law takes effect without material amendment; or

B. amendment, alteration, modification and repeal of any existing Law ;

C. any change in the interpretation or application of any Law by a competent court, tribunal or legislature in India having the authority to interpret or apply that Law or any interpretation of any Law by such authority which is contrary to the existing generally accepted interpretation thereof;

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

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

II. Provided nothing contained in this Section 17.1 shall be deemed to mean or construe any change in direct / indirect tax laws, taxes, duties, cess, surcharge or other statutory levies effected from time to time by any Government Authority or change in tariffs by Regulatory Authority, as Change in Law

III. For avoidance of doubt, it is hereby clarified that inclusion of Kandla Port or the Project in the scope /purview of any Regulatory Authority shall not be Change in Law.

17.2. Notification of a Change in Law

I. The Licensee shall on the occurrence of a Change in Law, give notice of such Change in Law to the Licensor in accordance with the provisions of this Section 17 as soon as it may be reasonably practicable.

II. The notice served pursuant to this section shall provide inter-alia, precise details of the Change in Law and the effect thereof on the Licensee.

17.3. Consequences of Change in Law

I. In the event that a Change in Law renders impossible the exercise by the Licensee, of any of its material rights or performance by the Licensee of any of its material duties and obligations, unless such obligation is waived by a Person having the power to do so under this Agreement, the Licensee shall serve a notice for termination of this Agreement (Notice of Intent to Terminate). Provided that prior to service of the Termination Notice, the Parties shall consult in good faith for a period of 90 Days to mitigate the Material Adverse Effect of the Change in Law. In the event the Parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 90 Day period, either Party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved in accordance with Section 24.

II. The Parties hereby acknowledge and agree that:

a) the Licensee shall be entitled to serve a Termination Notice on the Licensor provided that the Change in Law results in physical or legal impossibility of performance of the Licensee's obligations or exercise of its rights under this Agreement. The Parties shall bear the respective impact of any economic consequences of Change in Law;

b) the change in constitution, powers or scope of the regulatory authority or the appointment of a new regulatory authority by the Government for the regulation of ports shall be deemed not to be a Change in Law.

III. Upon Termination of this Agreement due to Change in Law the Licensor shall takeover the Project as per Section 20 and pay compensation to the Licensee as per Section 22.2.

18. Force Majeure

18.1. Force Majeure Event defined

As used in this Agreement, a Force Majeure Event shall mean any or all of the Non-Political Force Majeure, Indirect Political Force Majeure and Direct Indian Political Force Majeure Events as defined hereunder in Section 18.2 which for the consequences of which have a Material Adverse Effect on the Party claiming Force Majeure (the "Affected Party") from performing its obligations in whole or in part under this Agreement and which are beyond the reasonable control and not the fault of the Affected Party and which (or the material and adverse effect of which) the Affected Party could not have prevented by the exercise of reasonable skill and care.

18.2. Types of Force Majeure Events

18.2.1. Non-Political Force Majeure Events

I. act of God such as storm, lightning, cyclone, hurricane, earthquake, volcanic eruption, flood or landslide

II. fire, explosion, accident caused by a person not being the Affected Party or any of its employees or agents or any of its contractors or sub-contractors or any of their respective employees or agents and not being due to inherent defects of the Terminal or any part thereof or the failure of the Licensee to properly design, construct, develop, operate and maintain the Terminal or any part thereof

III. epidemic or famine

IV. radioactive contamination, nuclear blast or ionising radiation not due to an act of war

V. air crash, shipwrecks

VI. strikes or lockouts interrupting supplies and services to the Project (other than those involving the Licensee, its employees or agents or its contractors or sub-contractors or any of their respective employees or agents or any strike or lockout attributable to any unfair policy or practice of the aforementioned persons) not being an Indirect Indian Political Event as set forth in Section 18.2.2 under this Agreement

VII. any event or circumstance of a nature analogous to any of the above

18.2.2. Indirect Indian Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Indirect Indian Political Force Majeure

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

II. industrial action strikes by the employees of the Licensor or industry wide or state or nation wide strikes of the railways, oil companies or truckers,

III. any failure or delay of a main contractor executing a contract of significant value for the Project but only to the extent caused by another Indirect Indian Political Force Majeure Event,

IV. any event or circumstance of a nature analogous to any of the above.

18.2.3. Direct Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Direct Political Force Majeure

I. Change in Law affecting construction and operation of the Terminal under the provisions of this Agreement, and only when the provisions of Section 17 cannot be applied,

II. expropriation or compulsory acquisition by any Government Authority of any material assets or rights of the Affected Party or its contractors or agents except to the extent that it constitutes a remedy or sanction lawfully exercised by the Government Authority as a result of any breach by the Affected Party, its contractors or agents of any Applicable Law,

III. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Licensee or any of its contractors to perform their respective obligations under the Agreement provided that such delay, modification, denial, refusal or revocation did not result from the Licensee's or any of its contractors' inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

18.2.4. Force Majeure exclusions

None of the following shall, without limitation, constitute a Force Majeure Event:

I. late or non-delivery of equipment, materials, spare parts, water, power or other utilities for the Project unless the delay is due to a Force Majeure Event as defined above

II. insufficiency of funds or non availability of working capital for any reason whatsoever

III. non-performance resulting from normal wear and tear typically experienced in the operations of / in the Terminal or due to faulty design and or implementation

IV non-performance caused by or connected with the Licensee's / Licensor's

A. negligent or intentional acts or omissions

B. failure to comply with the Applicable Laws and Applicable Permits then in effect

C. Section under this Agreement by either Party.

18.3. Obligation of the Parties to perform

I. The obligations and liabilities of the Parties under this Agreement would continue as long as the performance is not impeded by Force Majeure Event as defined above in Section 18.1. The affected Party shall resume performance of its obligations under this Agreement as soon as possible after the Force Majeure Event ceases to exist.

II. Provided that the performance of the Licensee's obligations and liabilities shall, for the Period of Force Majeure, be governed as per and be subject to the Provisions of Section 18.4. Nothing in this Section 18 absolves the Licensee from the obligation of payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

18.4. Procedure

18.4.1. Notice

I. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event as soon as the same arises, and in any event within 10 (ten) Days after the knowledge by the Affected Party of such Force Majeure Event or after the Affected Party ought to reasonably have knowledge of its occurrence and the other Party acknowledges that Force Majeure would apply.

II. Notice shall inter-alia include full particulars of:

a) the nature of each Force Majeure Event

b) the date and time effective when the performance by the Affected Party of its obligations under this Agreement was affected

c) the effect which such Force Majeure Event is having on the performance by Affected Party of its obligations under this Agreement

d) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events or mitigate the damage and

e) any other relevant information

III. Failure by the Affected Party to give notice to the other Party within the time period specified above shall not prevent the Affected Party from giving such notice at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies as envisaged in Section 18.7 for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Section 18.4.1.

18.4.2. Reporting requirement

For so long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with regular (and not less than Monthly) written reports containing

I. the information called for by Section 18.4.1 and

II. such other information as the other Party may reasonably request and required under this Agreement

18.5. Period of Force Majeure

I. In this Section 18, reference to a period of Force Majeure shall mean the period from the date and time specified in the notice given by the Affected Party in respect of an event or circumstance of Force Majeure, until the earlier of:

a) such time as the performance by the Affected Party of its obligations hereunder is no longer or would no longer have been, if the Affected Party had complied with its obligations under this Section 18, materially and adversely affected by such event or circumstance of Force Majeure and

b) if this Agreement is terminated pursuant to Section 18.8 by reason of the event or circumstances of Force Majeure, the date in respect thereof of service of such notice.

II. When the Affected Party is able, or would have been able if it had complied with its obligations under the provisions of this Section 18, to resume performance of all of its obligations, under this Agreement affected by the occurrence or continuation of an event or circumstance of Force Majeure, then the Period of Force Majeure relating to such event or circumstance of Force Majeure shall be deemed to have ended and the Party affected by the Force Majeure Event shall forthwith give notice to that effect to the other Party.

III. In the event that such notice is not tendered by the Affected Party to the other party within a week from the expiry of the Force Majeure period, the other party may serve such notice to the Affected Party

18.6. Consultation and Duty to Mitigate

I. For so long as the Period of Force Majeure is continuing, the Affected Party shall consult with the other Party and the Affected Party shall use all reasonable endeavors to alleviate its effects on the performance of its obligations under this Agreement. The other Party shall offer reasonable assistance to the Affected Party to alleviate the effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.

II. The Affected Party shall use the insurance proceeds to mitigate the impact of the Force Majeure Event.

18.7. Consequences

Provided that the Affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 18.6, and during the Force Majeure period continues to comply with the same, the Affected Party shall be entitled to the following relief:

I. the obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be suspended for Political Force Majeure period or other Force Majeure period, as the case may be;

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

III. the time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended till the period it lasts plus time taken to mitigate the effect of the Political Force Majeure or other Force Majeure, as the case may be; and

IV. the term of this Agreement shall be extended till the period Force Majeure lasts plus time taken to mitigate the effect for the Political Force Majeure period or other Force Majeure period, as the case may be.

18.8. Termination Due to Force Majeure Event

I. In the event that any such Force Majeure event shall physically impede or prevent the Affected Party from performing its obligations under this Agreement for more than 90 Days from the date of commencement of such Force Majeure event, the Parties may mutually decide the terms upon which the Licensee shall continue the performance of its obligations. If the Parties are unable to agree on such terms within a period of 90 days, then the Licensee shall have the option to terminate the Agreement, except in case of Direct Political Force Majeure Event for which either parties shall have the right to terminate this Agreement

IX. If the Licensee does not exercise the right of termination and the Force Majeure Event (being an event other than Direct Political Force Majeure Event) continues for a period of one year from the date of commencement of Force Majeure Event, then the Licensor shall also have the right to terminate this Agreement.

19. Default and termination

19.1. The Licensee Event of Default

The Licensee Event of Default means any of the following events besides other events described as such elsewhere in this Agreement, unless such an event has occurred as a consequence of the Licensor Event of Default, Force Majeure Event or a Change in Law which results in consequences set out in Section 17.3 for a Force Majeure Event:

I. the Licensee's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement.

II. the Licensee's failure to achieve Financial Close within 12 months from the Date of Award of Licence.

III. failure to commence Commercial Operations within 2 years from the Zero Date and including such extended period for construction as may be approved by the Licensor.

IV. evidencing of an intention by the Licensee not to be bound by the terms of this Agreement.

V. the Licensee engaging or knowingly allowing any of its employees, agents, contractors or representatives to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law in the course of any activity undertaken pursuant to this Agreement.

VI. the Licensee assigns its rights, title and interest in the Agreement without the prior written approval of the Licensor.

VII. the Licensee sub-contracts the Licensed Premises or Project Facilities or any part thereof without the prior written approval of the Licensor.

VIII. the Licensee or any of its employees, agents, contractor and representatives engage in or knowing take part or fail to take action to prevent the commission of illegal activities at the Port.

IX. any representation made or warranties given by the Licensee is found to be false or misleading.

X. any information provided by the Licensee under this Agreement is found to be false or misleading or a material misrepresentation.

XI. the Licensee is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation or reconstruction provided that the property, assets and undertaking of the Licensee are transferred to its successor; and provided that such amalgamation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the Licensee's obligations and the technical, financial and operating capability of the successor should be satisfactory to the Licensor and is not prejudicial to national interest as determined by the Licensor.

XII. levy of an execution or distraint on the Licensee's assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 90 Days.

XIII. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Licensee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.

XIV. the Licensee abandons the construction or operation of the Terminal and /or any of the Project Facilities for a continuous period of 90 days.

XV. persistent failure on the part of the Licensee to operate and promote activities at the Terminal and provide users with services in accordance with the principles of Good Industry Practice and in accordance with the provisions of this Agreement.

XVI. failure of the Licensee to comply with statutory obligations under Applicable Laws

XVII. default to Lenders by the Licensee

XVIII. failure to apply insurance proceeds as per the provisions of the Section 15.2.8.5

XIX. failure to pay Revenue Share, land licence fee and land lease rentals as per provisions of Section 14.

XX. failure to furnish and/or replenish and/or keep valid any Guarantee as required under this Agreement

XXI. violation of strategic, security, environmental or conservancy concerns on the Licensee's part

XXII. failure to ensure shareholding as per the provisions of the Section 15.2.2.

19.2. The Licensor Event of Default

The following events (unless arising as a result of a Force Majeure, or Licensee Event of Default or a Change in Law) would constitute Licensor Event of Default:

I. the Licensor's failure to perform or discharge any of its material obligations in accordance with the provisions of this Agreement.

II. any representation made or warranties given by the Licensor under this Agreement is found to be false or misleading.

III. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Licensed Premises in any legal proceedings initiated against the Licensor.

IV. dissolution of the Licensor or occurrence of any structural changes within the present constitution of the Licensor which have a Material Adverse Effect on the rights and obligations of the Licensee under this Agreement, or the transfer of the Licensor's undertaking and statutory powers or any material part thereof, unless such dissolution or structural change or transfer is in connection with privatisation or other restructuring of all or any substantial part of the Licensor, and the Licensor's successor is able to perform the Licensor's obligations under this Agreement.

19.3. Consequences of default

In the event of a Licensor Event of Default or Licensee Event of Default ("Event of Default") the Termination procedure as set out in this section shall apply.

19.3.1. Notice of Intent to Terminate

I. On the happening of any Event of Default as set out above, the non defaulting Party may initiate Termination of this Agreement by delivering a notice to the defaulting Party of intention to terminate this Agreement (Notice of Intent to Terminate). The non-defaulting Party shall also send a copy of the Notice of Intent to Terminate to the Lenders.

II. The Notice of Intent to Terminate shall specify with reasonable detail the defaults committed by the defaulting Party.

19.3.2. Lenders rights to rectify

I. Without prejudice to Section 19.3.3 below, if Notice of Intent to Terminate is issued by the Licensor for non payment of any amount due and payable by the Licensee or for any other Licensee Event of Default, the Lenders shall within a period of 90 Days from the date of issue of the Notice of Intent to Terminate, have the right to rectify the default and take all such acts as may be necessary for such purpose.

II. In the event Lenders exercise the right to cure the default, the Lenders shall pay all sums then due and payable to the Licensor or in any other manner assist the Licensee in rectifying the Event of Default. If the Event of Default is cured within such period of 90 Days:

a) The Notice of Intent to Terminate shall stand revoked without prejudice to the rights of Licensor to issue similar notice for any subsequent breach or any other breaches by the Licensee; and

b) The Licensee shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate was not issued.

III. The Lenders rights under this Section 19.3.2 shall continue to remain in force during the Termination procedure and till the issue of the Termination Notice.

19.3.3. Remedy Period

I. Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of 90 Days ("Remedy Period") to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.

II. During the Remedy Period, the defaulting Party may continue to undertake efforts to cure the default, and the non-defaulting Party shall not, by any act or omission, impede or otherwise interfere with the defaulting Party's endeavours to remedy the Event of Default.

III. During the Remedy Period, both the Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

19.3.4. Withdrawal of Notice of Intent to Terminate

If, during the Remedy Period, the defaulting Party rectifies or remedies the default to the satisfaction of the non defaulting Party or the non defaulting Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the non defaulting Party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders.

19.3.5. Termination Notice

I. Upon the expiry of the Remedy Period, unless the Parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting Party or a Lender, the non defaulting Party may terminate this Agreement by giving a 90 Days written notice ("Termination Notice") to the defaulting Party, with a copy to the Lenders. The date of expiry of the Termination Notice shall be the date of termination of this Agreement.

II. Upon the expiry of such notice period unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement, this Agreement shall stand terminated on the Scheduled Date of Transfer and the provisions of Section 20 will be applicable.

19.3.6. Transfer Information Notice

I. Upon service of the Termination Notice in accordance with the provisions of this section on the defaulting Party, or on the service of a Termination Notice for Change in Law, the

Licensor shall be entitled to serve upon the Licensee a Transfer Information Notice calling upon the Licensee to provide within 30 Days the following:

a) all or any data or records regarding the operation and/or maintenance of the Terminal and the Project;

b) Statement of all capitalised assets and capital work in progress, as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, certified by the Statutory Auditors

c) Inventory of all assets prevailing at the Licensed Premises and Terminal on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

d) Inventory of all assets reflected in the balance sheet of the Licensee its affiliates, and/or subsidiaries on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

e) statement of debt outstanding as per original schedule of repayments (Debt Due) and paid up equity as on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, supported by Lenders certificate and Statutory Auditors certificate, to enable an estimation of the likely compensation, if any, payable by the Licensor to the Licensee.

f) statement of cash and cash equivalents as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

g) statement of net current assets as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate,

h) statement of equity and reserves as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

i) any other information or records regarding the Licensee, its business, assets and liabilities

II. On receipt of the Termination Notice, the Licensee shall cause to be conducted, by third party Experts, a condition survey of the entire Licensed Premises, Terminal and Project Facilities at the expense of the Party identified as per provisions of Section 22.8 to ascertain the condition and quality of the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof provided by the Licensee and to ascertain whether or not the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof provided by the Licensee are in working condition and whether or not the Licensee has complied with the provisions of this Agreement. A report by such Experts including an inventory and the condition of the assets prevalent at the Licensed Premises, Project Facilities and Terminal shall be submitted to the Licensor within two months of receipt of such notice.

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

IV In the event the Licensee fails to comply with the provisions of this Agreement, the Licensor may itself cause the condition survey to be conducted. The Licensor shall be promptly compensated by the Licensee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Licensed Premises and/or its Project Facilities or and/or the Terminal and/or any part thereof in good working condition failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for

recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

V. The Licensee shall also offer cooperation to the independent Experts appointed for condition survey.

19.3.7. Lenders' rights of substitution

I. If the Termination Notice is issued by the Licensor for a Licensee Event of Default:

A. within 30 Days from the date of issue of the Termination Notice, the Lenders (those to whom at least 75% of the debt is due) or such Lenders' agents may approach the Licensor with a request to replace the Licensee by another operator (**"Replacement Notice"**) for operating the Terminal under this Agreement. The Replacement Notice shall indicate the name(s) of the Nominated Developers(s) (ND) proposed to substitute the Licensee for the purpose of this Agreement. The Licensor and the Lenders will then consult for a period of 30 Days as to the suitability of the ND. If a ND does not meet the qualifying criteria, then such ND shall be deemed not to be technically, financially or managerially competent to operate the Terminal and Licensor shall be entitled to reject such ND. The Licensor shall also be entitled to reject such ND on grounds of national interests.

B. On appointment of a new ND in accordance with the provision of Section 19.3.7 I A above, the novation of this Agreement shall be effected by the Licensor with the new ND and the Licensee shall transfer all rights, title and interests in the Leased Premises and the Project to the ND, and this Agreement shall come to an end. The decision of the Licensor as to the acceptability of the ND shall be final and binding.

II. If within 90 Days from the date of Termination Notice, the ND acceptable to the Licensor does not execute a novation of this Agreement, the Licensor may terminate this Agreement on the expiry of the 90 Day period as if no Replacement Notice had been served.

19.3.8. Obligation of the Licensor and Licensee

I. Till the Transfer Date, the Parties shall, subject where applicable to the provisions of Section 18, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

II. From the date of issue of Notice of Intent to Terminate till withdrawal of the same, the Licensee shall not sell/dispose/modify or take any steps to sell/dispose/modify any of the assets or material contracts of the Licensee without prior written permission of the Licensor.

19.4. Step-in rights

I Notwithstanding anything in this Agreement the Licensee agrees that the Licensor (on its own or acting on behalf of the Government of India) or the Government of India shall be entitled to operate the Terminal on the occurrence of the following events:

A. Licensee Event of Default;

B. an emergency (being a condition or situation which in the reasonable opinion of the Licensor, poses a significant threat to the safe operation of the Terminal/Port or which seriously endangers the security of persons, plant or equipment); or

C. for national security and/or national interests reasons.

II. In the event of a Licensee Event of Default, the Licensor may (but shall not be obliged) operate the Terminal upon the issue of the Termination Notice under the provisions of Section

IV. Notwithstanding the exercise of step in rights, the provisions of Section 19 shall continue to apply.

III. Upon the occurrence of the events specified in Section 19.4 I B and Section 19.4 I C above, the Licensor, or Government of India may exercise step-in rights during which period:

A. the Licensor shall be entitled to all revenues and liable for all standing, and operating expenses including debt servicing relating to the facilities taken over;

B. the Licensor shall not be liable to compensate the Licensee or any other Person or the long-term users for any losses or estimated loss of profits during such period or any return on equity.

C. after a maximum continuous period of one year, the Project Facilities shall revert to the Licensee in the same condition, save for normal wear or tear. In the event of any dispute regarding the condition of Project Facilities reverting to the Licensee, the same may be referred to the Expert Committee.

IV. Excepting in the case of the events specified in Section 19.4 I A the Licensee shall be entitled to an extension of the Licence Period for the duration of exercise of step-in rights by the Licensor, or the Government of India.

V. Excepting in the case of the events specified in Section 19.4 I A, without prejudice to Section 19.4 IV, in the event that the step-in rights are exercised by the Licensor, or the Government of India for a cumulative period in excess of one year during the Licence Period, the parties shall determine, in good faith, the compensation payable to the Licensee for the loss of income. In the event that the parties are unable to agree on the compensation, the either Party may invoke dispute resolution procedure as per the provisions of Section 24.

20. Scope of transfer

I. The scope of take-over of assets as provided in this Agreement pursuant to termination hereof for any reason or expiry of the Licence shall include the following assets free from all Encumbrances (the "Transfer Assets"):

a) the Licensed Premises and all assets prevailing at the Licensed Premises and the Terminal on the date of issue of Notice of Intent to Terminate and shall, inter alia, include:

i) all land and buildings;

ii) plant and machinery; cargo handling equipment, storage facilities, pipelines and any other equipment

iii) spare parts;

iv) such deeds and documents as may be necessary for effectively transferring (in respect of the above) rights, title and all other interests under this Agreement in favour of the Licensor;

v) the benefits of all rights and interest in all unexpired insurance, guarantees and contractor warranties if so desired by the Licensor; and

vi) all documents, manuals, records, technical know-how, intellectual property rights, etc. as may be required for the efficient operation of the Terminal

b) all capitalised assets and capital work in progress, as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries and all capitalised assets in the asset register of the Licensee, its affiliates, and/or subsidiaries on the date of issue of Notice of Intent to Terminate as certified by the Statutory Auditor

c) All assets shall be transferred free of any and all Encumbrances

d) For avoidance of doubt, it is expressly clarified that the takeover shall exclude

i) All current assets and liabilities attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates and/or subsidiaries

ii) cash in hand and cash at bank, financial investments, loans and advances, other current assets if any, the benefit of any refund of tax attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries.

iii) any trade and book debts or receivables accruing to the Licensee prior to the date of Notice of Intent to Terminate

iv) Such agreements, contracts or arrangements as notified by the Licensor

II. Furthermore, notwithstanding anything contained in this clause no liability (accrued or contingent) of Licensee or relating to the Project arising on account of actions or inactions of the Licensee prior to the Transfer Date shall be assumed by the Licensor consequent to such transfer

III. Unless otherwise agreed to, miscellaneous assets and other intangible assets (such as goodwill) shall also stand excluded from the scope of asset takeover and compensation.

IV The Licensee undertakes to ensure that the provisions of this section shall be reflected in any agreement or contract that may be entered into between the Licensee and the sub-contractors or any other party for construction of assets or provision of services.

V. Notwithstanding anything contained herein and without prejudice to any of its other rights under this Agreement the Licensor shall be entitled to invoke and encash the entire amount under any subsisting Guarantee (s) provided by the Licensee, if the Termination is on account of a Licensee Event of Default.

VI. The compensation payable for such transfer is detailed in Section 22

21. Consequences of termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the License Period by efflux of time or due to a Force Majeure Event or an Event of Default or Change in Law.

21.1. Licensees obligations

I. On or before the Transfer Date, the Licensee shall subject to the provisions of this Agreement :

A. handover/surrender peaceful possession of the all Transfer Assets to the Licensor free of cost and without Encumbrance.

B. transfer all its rights, titles and interest in or over the Transfer Assets comprised in the Project Facilities to the Licensor and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

C The Licensee shall, at its cost, transfer to the Licensor all such Applicable Permits which the Licensor may require and which can be legally transferred.

D. The Licensee shall at its cost transfer/assign such of the contracts, which the Licensor may require to be transferred in its favour subject to the counterparties to such contracts consenting to such transfer/ assignment. The Licensee shall entirely at its cost, terminate all such contracts which are not transferred/assigned to the Licensor Notwithstanding anything contained in this clause the Licensor shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Licensor are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into.

21.2. Licensors obligations

i. On the Transfer Date, the Licensor shall subject to the provision of this Agreement, pay to the Licensee the compensation as the case may be in accordance with the provisions of Section 22.

21.3. Obligation of the Licensor and Licensee

i. The Licensor and the Licensee shall at least six months prior to the expiry of the Licence Period or upon commencement of Termination procedure as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets and payment of Final Compensation Payable as the case may be on the Transfer Date. During this period, the designated key personnel of the Licensor shall be associated with the operations of the Project Facilities (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Licensor on the Transfer Date.

22. Compensation Payable on Termination / Expiry

22.1. Early termination due to Licensor Event of Default

In case of Termination due to Licensor Event of Default occurring in any time during the Licence period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due plus Paid up Equity outstanding as on date of issue of Notice of Intent to Terminate plus 20% premium on such Paid up Equity, subject to the provisions of Section 2.7 II(d), Section 15.2.3 and Section 22.6.

For avoidance of doubt it is hereby clarified that the compensation shall be calculated as

Debt Due + Paid up Equity + (0.2 x (Paid up Equity))

For avoidance of doubt it is hereby clarified that no payments shall be made by the Licensor to the Licensee for the unexpired/unexhausted period of the Licence resulting from such early Termination

22.2. Early termination due to Change in Law or Force Majeure

In case of Termination due to Change in Law or Direct Political Force Majeure occurring in any time during the Licence period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due subject to the provisions of Section2.7 II(d), Section 15.2.3 and Section 22.6.



For avoidance of doubt, it is hereby clarified that the Licensee shall transfer the Transfer Assets to the Licensor free of any consideration and free of any Encumbrance, in the event of termination of this Agreement pursuant to any Force Majeure Event other than Direct Political Force Majeure Event.

22.3. Early termination due to Licensee Event of Default

In case of Termination due to Licensee Event of Default occurring in any time during the Licence Period, the Licensor shall pay to the Licensee, subject to the provisions of Section 2.7 II(d), Section 15.2.3 and Section 22.6, the lower of:

(i) the aggregate fair value, as determined by the Expert being a reputed valuer, of Transfer Assets (excluding any assets provided by the Licensor), LESS amounts if any due to the Licensor from the Licensee under the provisions of this Agreement;

(ii) the Debt Due

22.4. Compensation payable on expiry of Licence

In the event of the expiry of the Licence by efflux of time (the Licence having run its full course), the Licensee shall transfer the Transfer Assets to the Licensor, free of any consideration and free of any Encumbrance.

22.5. Clarification

For avoidance of doubt, it is hereby clarified that the valuation of the compensation payable to the Licensee shall not be done on a "going concern" basis under any case of Termination.

It is further expressly clarified that the compensation for transfer shall be paid at the time of and simultaneously with transfer of the Transfer Assets and shall always be payable in Indian currency

22.6. Final Compensation Payable

I. On early Termination of this Agreement (other than by normal expiry of Licence Period by efflux of time), the aggregate of the compensation payable shall be hereafter defined to be the "First Estimate of Compensation". The First Estimate of Compensation shall be reduced by such portion of the value of net current assets as is in excess of the paid up equity and reserves of the Licensee as on the date of issuance of the Notice of Intent to Terminate. It is further expressly clarified that in case the value of such net current assets are less than the value of such paid up equity and reserves, no additions to the First Estimate of Compensation shall be made.

II. The First Estimate of Compensation shall be corrected for any outstanding penalties and dues payable by the Licensee to the Licensor and/or any damages suffered by the Licensor and attributable to the Licensee.

III. The First Estimate of Compensation shall also stand reduced by the amount of any insurance proceeds receivable and/or any compensation receivable from any body and/or any amount payable by the Central Government and shall be corrected in respect of any adjustments that may be deemed necessary by Experts appointed for the purpose.

IV. The First Estimate of Compensation shall be further reduced by any discrepancy found in respect of the Transfer Assets as compared with the assets recorded in the books of the Licensee as on the date of the issuance of the Notice of Intent to Terminate, with the value of such discrepancy to be determined by the Expert referred to in Section 22.3 above.

V The final amount so arrived at after the aforesaid adjustments would be the "Final Compensation Payable" to the Licensee upon early Termination, subject to the provisions of Section 15.2.9 IV. The Final Compensation Payable shall be paid by the Licensor on transfer of Transfer Assets

22.7. Payment of compensation to Lenders

I. The Licensee hereby irrevocably authorises the Licensor to pay to the Lenders or at their instruction to any designated bank account in India the Final Compensation Payable to the Licensee. The Licensee confirms that upon such payment being made, the Licensor shall stand duly discharged of its obligations regarding payment of Final Compensation Payable under this Agreement and the charge created by the Licensee in favour of the Lenders on any of its assets taken over by the Licensor shall stand satisfied and all such assets shall, on and from the Transfer Date be free from such charge. The Licensee further confirms that payment of Final Compensation Payable by Licensor in accordance with this Section 22.7 shall be a valid discharge to the Licensor in respect of Licensor's obligation regarding payment of Final Compensation Payable to the Licensee under this Agreement.

II. Provided notwithstanding anything inconsistent contained in this Agreement, the Licensee/the Lenders as the case may be shall be entitled to remove at its/ their cost all such movables which are not taken over by the Licensor and to deal with the same in accordance with their respective rights under law.

III. Provided further, if there are no amounts outstanding under the Financing Documents and the Licensee furnishes a certificate to that effect issued by the Lenders to the Licensor, the Final Compensation Payable shall be paid by the Licensor to the Licensee directly where such payment is due to the Licensee.

22.8. Transfer fee and charges

Transfer fees, charges, and other incidental expenses incurred at the time of Termination or transfer on expiry of Licence by efflux of time or on early termination shall be borne by the Licensor and the Licensee in the following proportion:

Head of Charge	Onus
1. Transfer fees or stamp duties, recording costs, notary fees	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
2. Fees to third party experts for any required inspections, condition surveys or certifications	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
3. Internal costs and expenses of each Party (management time, cost of surveys, inventories, inspections etc)	• To be borne by each Party respectively

22.9. Licensor's liability

In the event of expiry of Licence by efflux of time or Termination of this Agreement, the Licensor shall not be liable for any liability and/or damages to the Licensee or to any other third party except in accordance with the provisions of this Section 22.

23. Procedure for transfer

23.1. Time for transfer

I. In case of expiry of Licence by efflux of time, the Licensor shall issue a Transfer Information Notice at least 24 months before the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 19.3.6.

II. In case of early Termination of the Agreement, the Licensor shall issue a Transfer Information Notice indicating the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 19.3.6.

III. The scope of transfer of the Transfer Assets, the consideration payable, and the transfer fees and charges at the time of transfer consequent to Termination and/or expiry of Licence by efflux of time, shall be determined in accordance with the provisions of Section 20 and Section 22.

23.2. Transfer of the facilities and premises

I. In the event of expiry of Licence by efflux of time, the final transfer of the Transfer Assets shall be effected within 60 Days of the Scheduled Date of Transfer ("Actual Date of Transfer").

II. In the event of early Termination due to Licensor Event of Default, the Transfer Assets shall be effected as specified in the Transfer Information Notice and as provided for in Section 23.1 II.

23.2.1. Delayed transfer of assets

I. If for any reasons other than those attributable to the Licensor the Licensee fails to transfer the Transfer Assets on the Transfer Date in accordance with this Agreement, there shall be no suspension of the operation and maintenance of the Project Facilities and

a) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the earlier of the fifth of the Month for the previous Month or the date of transfer

b) the Licensee shall be liable to pay to the Licensor, for every Day of delay, liquidated damages computed at the rate of the average daily after tax profits earned by the Licensee during the three years immediately preceding the Transfer Date.

II. Provided nothing contained herein shall be deemed or construed to authorise delay in transfer of assets, rights and contracts by the Licensee to the Licensor in accordance with the requirements thereof under this Agreement and without any compensation for termination of such agency arrangements.

III. In case the transfer of Transfer Assets by the Licensee to the Licensor is delayed for reasons attributable to the Licensor, there shall be no suspension of the operation and maintenance of the Project Facilities and the Licensee shall nonetheless continue to operate the Project Facilities, but as agent of the Licensor. Provided however,

a) the Licensee shall, as agent of the Licensor continue to operate and maintain the Project Facilities until completion of the transfer formalities, for an agency remuneration of Rs 10,000 (Rupees Ten Thousand) per year or part thereof and

b) the Licensee shall not be liable to pay any liquidated damages;

c) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the earlier of the fifth of the Month for the previous Month or the date of transfer

23.2.2. Passing of risk

Until the Actual Date of Transfer, the Transfer Assets shall remain at the sole risk of the Licensee, and the Licensee shall be solely responsible for any loss of or damage caused to or suffered by the Licensee for any reasons whatsoever to whole or any part of the Project, unless such loss or damage caused to or suffered by the Licensee is due to any act of default or omission or negligence on the part of the Licensor.

24. Dispute resolution

Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be amicably resolved by the Expert Committee in accordance with the procedure set forth in Section 24.1.

24.1. Expert Committee

I. In the event a Party issues a notice (Expert Committee Notice) to refer the dispute to the Expert Committee, the parties may finalise a choice of an independent expert in the field of port and harbour engineering and/or financial and cost accounting as the case warrants within one week of such notice, failing which, each Party shall appoint one independent expert within two weeks of the Expert Committee Notice

II. The two experts will jointly appoint a third expert with required experience within one week of their appointment. The 3 Experts jointly shall constitute the Expert Committee.

III. Such independent experts shall have adequate experience in the design, construction, operation and maintenance of port facilities and/or port finances, accounting and costing practices as the case warrants.

IV. The Party issuing the Expert Committee Notice will provide the Experts with written submission of the nature of the dispute and the claim of the other Party along with supporting documents within one week of the constitution of the Expert Committee. Within one week of the furnishing of such submission, the other Party may choose to provide written submissions defending its position.

V. The Expert Committee may call on either Party to furnish additional information as deemed necessary to solve the dispute.

VI. The Expert Committee shall give the majority decision to both Parties within three weeks of the receipt of written submission from the contracting Parties.

VII. The Parties shall share the costs of the engagement of the Expert Committees equally.

VIII. Pending the submission of and/or decision on a Dispute, difference or claim by the Expert Committee, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such decision.

24.2. Arbitration

I. If the dispute has not been resolved by the Expert Committee as evidenced by the signing of the written terms of settlement within 90 Days (or such other extended period as mutually agreed by the Parties) after the receipt of the Expert Committee Notice, then such dispute shall be submitted to arbitration and shall be finally determined in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof.

II. The arbitration shall be by a sole Arbitrator mutually agreeable to the Parties. If the Parties are unable to agree upon an Arbitrator within 15 Days of the first request by one Party, the Arbitrator shall be nominated by the Licensor. Provided that the Licensor shall not nominate any employee of the Licensor as arbitrator.

III. The venue of arbitration shall be Chennai and the language of arbitration shall be English.

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

V. Clause Deleted

VI. Prior to reference of any dispute to the arbitration, the Parties shall enter into an agreement in writing detailing inter-alia

a) The arbitrators fees

b) Period of completion of the arbitration process

25. Miscellaneous Provisions

25.1. Amendments etc.

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

25.2. Survival of Obligations

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

25.3. Agreement to Override Other Agreements; Conflicts

This Agreement constitutes the entire agreement between the Licensee and the Licensor concerning the subject matter hereof. This Agreement supersedes all previous agreements or arrangements between parties, including any memoranda of understanding entered into in respect of the contents hereof, and represents the entire understanding between the parties in relation thereto.

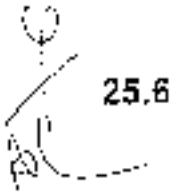
In the event of any inconsistency between the text of the clauses of Part I of this Agreement and the Part II of this Agreement, the text of the clauses of Part I of this Agreement shall be controlling.

25.4. No Waiver; Remedies

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

25.5. Severance of terms

If any provisions of this Agreement are declared to invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect



25.6. Joint Responsibility

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

25.7. Language

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

25.8. Notices

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

LICENSOR:

Chairman and Managing Director
Ennore Port Limited
15 Kasturirangan Road
Alwarpet
Chennai 600018
Tel: 044 24983051
Fax: 044 24662077

LICENSEE:

Ennore Tank Terminals Private Limited
39 Kasturirangan Road
Alwarpet,
Chennai– 600 018
Tel: 044 24994880
Fax: 044 24661738

or such other address, telex number or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing to the adoption thereof.

25.9. Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and subject to Section 24 above, the Courts at Chennai, Tamil Nadu, India shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement.

25.10. No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever except as expressly provided in this Agreement.



25.11. Original Document

This Agreement is made in two original copies, each having the same contents and the parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

IN WITNESS HEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For and on behalf of
Ennore Port Limited

WITNESS:

1. A. Rajagopalan, Director (Operations), Ennore Port Ltd
(A. RAJAGOPALAN) S/o Late S.A. CHARI
2. M. Gunasekaran S/o S. Murugan 46/7 I Avenue Ashok Nagar Chennai
Manager (Finance) Ennore Port Ltd

For and on behalf of
Ennore Tank Terminals Private Limited

WITNESS:

1. N. Kathiresan (N. KATHIRESAN) S/o Late S. Nagarajan
22, Vasan Road,
Saidapet, Chennai-15
2. (S. MANIGAN) S/o P.N. Sivaramakrishnan
9/2 South Canal Bank Rd.,
Mandaveli,
Chennai-28.

एण्णूर पोर्ट लिमिटेड

Ennore Port Limited

(A GOVERNMENT OF INDIA UNDERTAKING)

Phone : 044-2498 3051 / 52
Fax : 044 24662277
E-mail : info@ennoreportltd.com
Website : www.ennoreportltd.com

पंजीकृत कार्यालय
Registered Office
15, कस्तूरी रंगन रोड,
15, Kasturirangan Road,
आलवारपेट, चेन्नै 600 018
Alwarpet, Chennai - 18.

EPL/45-C/2002
Dated: 12th October 2004.

Date :.....

IMC Limited
39, Kasturirangan Road
Alwarpet
Chennai 600018.

Attention: Lt. Cdr. S. Rangarajan, General Manager (Business Development)

Sub: Letter of Intent - Project to design, engineer, finance, construct, operate, maintain and market and transfer a common user Marine Liquid Terminal on Build Operate-Transfer (B-O-T) basis at Ennore Port, India.

Ref: 1. Your response to the RFQ **EPL/45-C/2002.**
2. EPL's letter of qualification dated 14th May 2003.
3. Your Notice of Intent to submit the Detailed Techno-Commercial proposal dated 12th January 2004.
4. Your Detailed Techno-Commercial Proposal submitted alongwith the Covering letter and other enclosures dated 12th May 2004.

Dear Sir,

With reference to the above, subsequent to the evaluation of the Detailed Techno-Commercial Proposals submitted by Eligible Bidders, Ennore Port Limited is glad to inform you that,

I. Your consortium represented by **IMC Limited and Larsen & Toubro Limited (L & T)** of which **IMC Limited** is the Authorised Signatory is selected as the Preferred Bidder for the development and implementation of the Project referred to above by this Letter of Intent issued on the 12th day of **October 2004**, subject to

II. You are hereby required to furnish the certificate of the incorporation of the Project Company with whom Ennore Port Ltd will be signing the Licence Agreement.

III You are hereby required to, under the terms of the RFP, within 30 days of issue of this Letter of Intent

a. make payment to EPL, the non refundable and irrecoverable Upfront Development Charge of Rs 400,00,000 (Rupees Four Crore)

b. sign the Licence Agreement

IV. In case you do not comply in full with the requirements of this Letter of Intent and as specified in II and III above, without prejudice to any of the rights of Ennore Port Ltd under the terms of the tender EPL/15-C/2002,

a. your selection as the Preferred Bidder and as communicated by this letter will stand forthwith cancelled; and

b. this Letter of Intent shall stand forthwith annulled and revoked; and

c. your Proposal Security provided along with your Detailed Technical Proposal shall be forfeited

Kindly return a signed copy of this letter acknowledging your unconditional acceptance of this Letter of Intent and comply with the requirements specified in this Letter of Intent as stipulated above expeditiously.

We wish you all the best for the successful implementation of the project.

Thanking you,

Yours faithfully

(M.Raman)
Chairman cum Managing Director
Ennore Port Limited

We confirm our unconditional acceptance of this Letter of Intent and undertake to abide by the terms and conditions outlined herein.

Authorised Signatory
Consortium - JMC Limited and Larsen & Toubro Limited
Date:

IMC LIMITED

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018 .India. Tel : 2499 4980, 2499 1992
Fax: 91- 44-2466 1739. E-Mail: imcl@glos.md01.vsnl.net.in URL : www.theimcgroup.com

28-Oct-2004

The Chairman & Managing Director
Ennore Port Limited
15, Kasturi Rangan Road
Alwarpet
Chennai 600 018

Kind Attn.: Dr.A.Rajagopal – Director (Operations)

Dear Sirs

Sub : Common User Marine Liquid Terminal at Ennore Port on BOT basis – RFP No.EPL/45-C/2002 - Request for Change in Authorized Signatory

We wish to inform that, due to internal organizational changes, we are nominating Mr.Anand Ranganuthi, General Manager, as the Authorized Signatory in place of Mr.S.Rangarajan - General Manager (Business Development) with immediate effect.

The Power of Attorney authorizing Mr.Anand Ranganuthi to sign letters, documents, Agreements etc and dealing with Ennore Port Ltd for the above project is enclosed.

The enclosed Power of Attorney dated 27th October 2004, shall supersede the previous Power of Attorney submitted as part of the RFQ/RFP documents.

This is for your information and records.

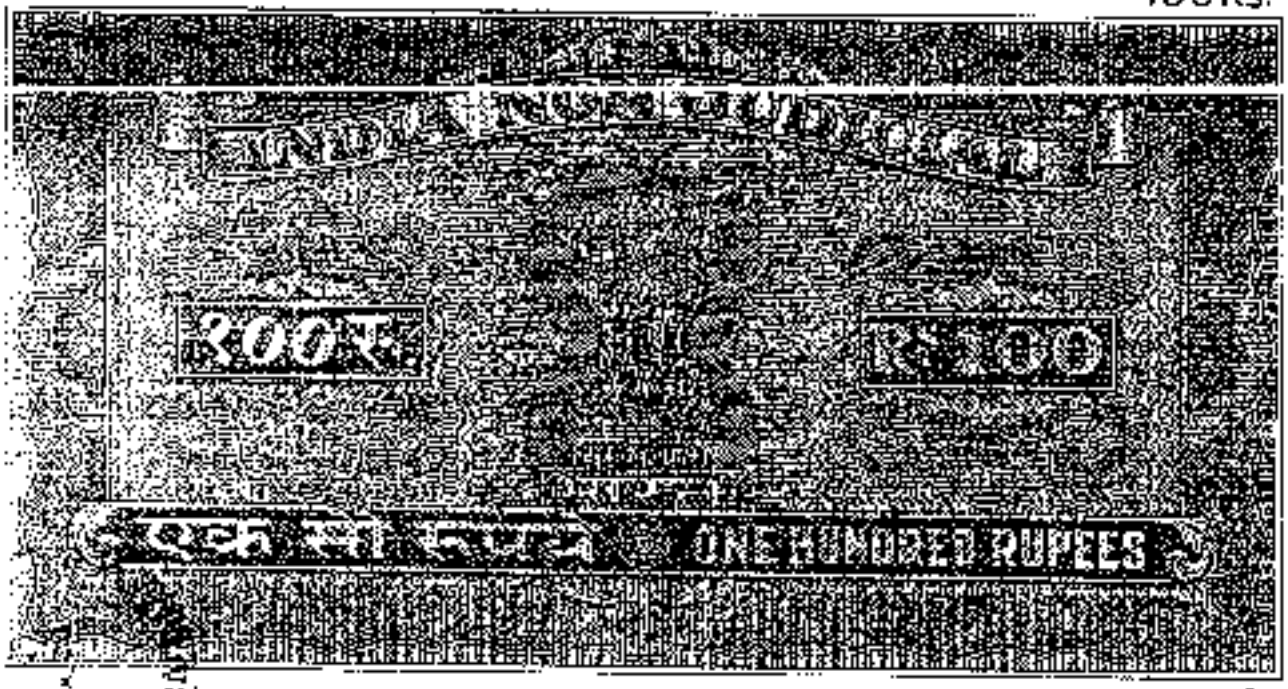
Thanking You

Yours sincerely,
for IMC-L&T consortium

N.Krishnan
Manager - Marketing

cc: L&T, ECC Division - Chennai

100Rs.



V. DHANALAKSHMI,
STAMP VENDOR,
L.C. No. 44/96 dt. 20.12.1996
280/7, K.N. Road, Nungambakkam
MADRAS-600 034.

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY dated 27th day of October 2004, We IMC Limited, an existing Company within the meaning of the Companies, Act, 1913 having its Registered Office at No. 232A, Acharjya Jagadish Bose Road, Kolkata - 700 020 and having Corporate Office at New No. 39, Kasturi Ranga Road, Alwarpet, Chennai - 600018 (hereinafter called "the Company") represented by its G M – Finance & Secretary Shri. C.N. Ananthakrishnan do hereby appoint, nominate and constitute Mr. **Anand Rangamurti** aged about 41 years son of Shri. K.S. Rangamurti residing at Flat No. S2, IInd Floor, Bay Castle, 131/7, Padmanabha Nagar, Besant Nagar, Chennai 600090 and Mr. N. Krishnan aged about 36 years son of Shri S. Nagarajan residing at Sri Durgai, 22, Vasan Street, Chennai – 600 011 as our attorney in our name and on our behalf to do the following acts **INDIVIDUALLY:** -

1. to provide information and respond to enquiries, etc. as may be required by the Ennore Port Limited or any Governmental Authority for the Common-User Marine Liquid Terminal on B.O.T. basis at Ennore Port, India.

Contd. . . 2.

for IMC LIMITED

(C.N. ANANTHAKRISHNAN)
GM-Finance & Secretary

2. to sign any applications, documents or declarations as may be required by the said Authorities or as the Attorney holder may deem fit.

3. to generally do all such acts as may be necessary to carry out the above intention.

4. the Attorney holder's specimen signatures are given below:-

Name of the Attorney	Signature
1. Mr. Anand Rangamurti	
2. Mr. N. Krishnan	

The Company do hereby agree to confirm and ratify all acts done or performed by the said Attorneys by virtue by this Power of Attorney.

IN WITNESS WHEREOF the above named Donor, IMC Limited execute these presents on the 27th day of October 2004.

The Common Seal of the Company was hereunto affixed in the presence of Mr. Mr. C.N. Ananthakrishnan, GM – Finance & Secretary on this the 27th day of October 2004:

for IMC LIMITED

C.N. ANANTHAKRISHNAN
GM – FINANCE & SECRETARY

for IMC LIMITED

(C.N. ANANTHAKRISHNAN)
GM-Finance & Secretary

WITNESSES:

1. S. GANESAN
No. 9/2, South Canal Bank 2nd Street,
Mandavelipakkam,
R.A. Puram
Chennai 600 028.

2. K.R. RAMESH
Modern Apartments, Flat No. F1,
New No.3/200, Medavakkam Main Rd.
Madipakkam,
Chennai 600 091.

S. SRIDHAR
ADVOCATE & NOTARY PUBLIC
No. 5, RAVASAMY STREET,
G.P.O.(A.P.) PURAM, CHENNAI-600 028.
Phone : 24736...

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India. Tel : 2499 4880, 2466 1892
Fax: 91-44-2466 1738. E-Mail: imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

8-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopal – Director (Operations)

Sub : Common user Marine Liquid Terminal RFP No.EPL/48-C/2002 – SPV

We have formed an SPV in the name and style of Ennore Tank Terminals Pvt. Ltd., which will be entering into Agreement with Ennore Port Ltd for the above project.

Please find enclosed copy of incorporation of the SPV for your reference.

Thanking You,

Yours sincerely,
for IMC-L&T Consortium

Anand Rangamurti
General Manager

FORM I A.

CERTIFICATE OF INCORPORATION

CIN U60300TN2004PTC054610

I hereby certify that ENNORE TANK TERMINALS PRIVATE LIMITED

is this day incorporated under the Companies Act 1956 (No.1 of 1956) and that the Company is Limited.

Given under my hand at CHENNAI

this FIFTH / FOURTEENTH day of NOVEMBER / KARTIKA

Two thousand FOUR

One thousand nine hundred and TWENTY SIX (Saka)

SEAL OF THE REGISTRAR OF COMPANIES ★TAMIL NADU★

(VASANTHA KUMAR A.I.L.)

ASST. Registrar of Companies
TAMIL NADU

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018, India Tel : 2499 4860, 2466 1992
Fax: 91- 44-2466 1730. E-Mail: lmel@giasmd01.vsnl.net.in URL: www.lntmcgroup.com

8-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopal – Director (Operations)

Sub : Common user Marine Liquid Terminal – RFP No.EPL/45-C/2002 – Memorandum of Association and Articles of Association of the SPV

Please find enclosed certified true copy of the Memorandum and Articles of Association of Ennore Tank Terminals Pvt Ltd, the SPV incorporated to execute the above project.

Thanking You

Yours truly,

for LMC-L&T Consortium

Angad Raugamurti
General Manager

MEMORANDUM OF ASSOCIATION

AND

ARTICLES OF ASSOCIATION

OF

ENNORE TANK TERMINALS PRIVATE LIMITED

CERTIFIED
TRUE COPY

For ENNORE TANK TERMINALS PVT. LTD.

Director

FORM 1A,

CERTIFICATE OF INCORPORATION

CIN U60300TN2004PTC054613

I hereby certify that ENNORE TANK TERMINALS PRIVATE LIMITED

is this day incorporated under the Companies Act 1956 (No.1 of 1956) and that the Company is Limited.

Given under my hand at CHENNAI

this FIFTH day of NOVEMBER
FOURTEENTH KARTTIKA

Two thousand FOUR

One thousand nine hundred and TWENTY SIX (Saka)

SEAL OF THE REGISTRAR OF COMPANIES ★ TAMIL NADU ★

(VASANTHA KUMAR AIL)
Asst. Registrar of Companies
TAMIL NADU

CERTIFIED
TRUE COPY

For ENNORE TANK TERMINALS PVT. LTD.

Director

The Companies Act, 1956
(Company Limited by Shares)

MEMORANDUM OF ASSOCIATION
OF
ENNORE TANK TERMINALS PRIVATE LIMITED

I. The Name of the Company is ENNORE TANK TERMINALS PRIVATE LIMITED

II. The Registered Office of the Company will be situated in the State of Tamilnadu

III. The Objects for which the Company is established are :

(A) **THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE :-**

1. To design, engineer, finance, develop, construct, operate, maintain, market, and transfer (to Ennore Port Ltd.) at the end of the concession period a common user marine liquid terminal to handle, store and deal in all liquid cargoes and gases on BOT (Build, own and transfer) basis at Ennore Port.

2. To develop, create, construct, maintain, supervise, market, assist, handle Marine facilities such as JETTY, Pipeline Trestle and On-Shore facilities and render all supportive assistance such as services, security arrangements and provide fire fighting systems.

3. To develop an all weather, deep water jetty, coaction user terminal including designing, engineering, assisting, financing, marketing, operating, maintaining and to transfer at the end of the concession period, if required by Ennore Port Ltd., multi purpose facilities, cargo handling, pollution control facilities, electrification, storage and all other infrastructure needed to maintain the terminal as per International Standards and good industrial practices

(B) THE OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS ARE :-

1. To buy, refine, manipulate, import, indent and deal in all substances, apparatus and things capable of being used in any such business as aforesaid and in particular anything that may be required by any customer or person having dealing with the Company either in wholesale, retail or as commission.

2. To repair, alter, remodel, clean, renovate, convert, manipulate and prepare for resale and resell any goods and materials from time to time belonging to the Company.

3. To purchase, taken on lease or licence or in exchange, hire or otherwise any real and/or personal property and any rights or privileges and advantages of any kind whatsoever which the Company may think necessary or convenient for the purposes of its business or may enhance the value of any other property of the Company, and in particular, any land (freehold, leasehold or other tenure) tenements, buildings, easement, machinery plant and stock-in-trade and on any such lands to erect buildings, factories, sheds, godowns or other structures for the works and purposes of the Company and also for the residence and amenity of its employees staff and other workmen and erect and install machinery and plant and other equipment deemed necessary or convenient or profitable for the purposes of the Company and either to retain any property to be acquired for the purposes of the Company's business or to re-sell, mortgage, let on lease or otherwise deal with to turn the same to account as may seem expedient.

4. To apply for, purchase, or otherwise acquire and protect and renew in any part of the world any patents patent rights, trade marks, formulas, licences, concessions, and the like conferring any exclusive or non exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated directly or indirectly to benefit the Company and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired.

5. To adopt such means of making known as articles, goods, products, appliances, manufactured or dealt in by or at the disposal of the Company as may seem expedient

6. To appoint managers, engineers, contractors, brokers, canvassers, agents and other persons and to establish and maintain agencies or branches in any part of India or elsewhere for the purposes of the Company and to discharge and to discontinue the same.

7. To expend money on experimenting upon and testing and improving to securing any process or processes, patent or patents, or protecting any invention or inventions which the company may acquire or propose to acquire or deal with.

8. To execute any trusts, which may seem to the company desirable and either gratuitous or otherwise.

9. To create any subscription fund, sinking funds, reserve funds, insurance funds, or any other special funds whether for repairing, improving, extending, or maintaining any of the property of the Company or for any other purpose conducive to the interest of the company or the staff or labour or for any development fund.

10. To sell, lease, mortgage, grant licences, easements, and other rights, over and in any other manner whatsoever to transfer deal with or dispose of the undertaking, property, assets, rights and effects of the Company, or any part thereof, for such consideration, as the Company may think fit and, in particular, for shares, stocks, debentures or other securities of any other company whether or not having objects altogether or in part similar to those of the Company.

11. To apply, tender, purchase or otherwise acquire any contracts, sub-contracts, licences and concession for or in relation to object or business herein-mentioned or any of them and to undertake, execute, carry out, dispose of or otherwise term to account the same.

12. Subject to the provisions of the Act,To amalgamate, enter into partnership or make any agreement for sharing profits, union of interests, co-operation, joint venture or reciprocal concession or for limiting competition, with any individual, person or company carrying or engaged in, or about to carry on or engaged in any business or transaction which the company is authorised to carry on.

13. To purchase or otherwise, acquire and undertake the whole or any part of the business, property, rights and liabilities of any person, firm or company carrying on or proposing to carry on any business which this company is authorised to carry on, or possessed of the property or rights, suitable for any of the purposes of the company, and to purchase, acquire, sell and deal in property, shares, stocks, debenture-stocks of any such person, firm or company and to conduct, make or to carry into effect any arrangement in regard to the winding up of the business of any such person, firm or company.

14. To establish or promote or concur or be interested in establishing or promoting any company or companies for the purpose of acquiring all or any of the property, rights and liabilities of the company of and to transfer to any such company and property of the company and to place or guarantee the placing of underwrite, subscribe for or otherwise, acquire all or any part of the share, debentures or other securities of any such other company and to subsidise or otherwise assist any such other company.

15. To acquire, purchase, take over and/or amalgamate business of companies which, under existing circumstances, from time to time may conveniently or advantageously to be combined with the business of the company to amalgamate with companies whose business are so acquired, purchased or taken over and/or to enter into agreements with the object of acquisition of such undertakings and/or business, having objects similar to those of this company.

16. To open current or fixed accounts with any bank, bankers, shroff, or merchant and to pay into, and draw money from such accounts and to negotiate loans, to operate, to give instructions as may be desired necessary for the operation of such account, to draw, accept, endorse, discount, buy, sell, and deal in bills of exchange, promissory notes, bonds, debentures, coupons, and other negotiable or transferable instruments and securities.

17. Subject to the provisions of the Companies Act, 1956,to borrow or raise money and secure and discharge any debt or obligation binding on the company in such manner as may be thought fit, and in particular, by mortgages of the undertaking and all or any of the immovable and movable property (present or future) and the uncalled capital of the company or by the creation and issue, on such terms as may be thought expedient, debentures, or debenture stock, perpetual or otherwise, or other securities of any description.

18. To make advances of such sum or sums of money upon or in respect of or for the purpose of raw materials, goods, machinery, stores or any other property, articles and things required for the purposes of the Company upon such terms with or without security, as the Company may deem expedient.

19. To appoint agents and constitute branches and agencies of the company in India or any part of the world In the matters and for the purposes aforesaid to act solely or jointly with any other person, company, corporation or body as the circumstance may require.

20. To pay for any property or rights acquired by the Company either in cash or by the allotment of fully or partly paid up shares of this Company with or without preferred rights in respect of dividend or repayment of capital or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another and generally on such terms as the Company may determine.

21. To manage land, buildings and other property both movable and immovable whether belonging to the Company or not and to collect rents and income and to supply to tenants and occupiers, attendants, servants, waiting rooms, reading rooms and other conveniences.

22. To employ experts to investigate and examine into the condition, management, prospects, value, character and circumstances of any business, concerns and undertakings and generally of any assets property or rights.

23. To provide for and furnish or secure to any members or customers of the Company or to any subscribers to or purchasers or possessors of any publication of the Company, or of any coupons or tickets, issued with any publication of the Company, any conveniences, advantages, benefits or special privileges which may seem expedient and either gratuitously or otherwise.

24. To establish and maintain or procure the establishment and maintenance of any contributory or non-contributory provident, pension, or superannuation funds or any other funds for the welfare and benefit of, and give or procure the giving of donations, gratuities, pension, allowances or emoluments or any other pecuniary aid to any person who are or were at any time in the employment or service of the Company or who are or were at any time the Directors or Officers of the Company and the wives, widows, families and dependents of any such persons, and also establish and subsidise and subscribe to any institution, associations, clubs or funds calculated to the benefit of or to advance the interests and well being of the Company and make payments to or towards the insurance of any such person as aforesaid and to any of the matters aforesaid either alone or in conjunction with any other Company.

25. To give to any officers, servants or employees of the Company and share or interest in the profits of the Company's business or any branch thereof, and whether carried on by means or through the agency of any subsidiary company or not, and for that purpose to enter into agreements the Company may think fit.

26. To train or pay the training in India or abroad of any of the Company's employees or any candidate in the interest of for the furtherance of the Company's objects.

27. To establish, provide, maintain and conduct of otherwise, subsidise research laboratories and experimental workshops for scientific and technical researches and experiments and to undertake and carry on with all scientific and technical researches, experiments and tests of all kinds and to promote studies and research, both scientific and technical, investigations and inventions by providing subsidising, endowing, of assisting, laboratories, work-shops, libraries, meetings, lectures and conferences and by providing for the remuneration of scientific or technical professors or teachers and by providing for the award of exhibitions, scholarships, prizes and grant to students or otherwise and generally to encourage, promote and reward studies, researches, investigations, experiments, tests and investigation of any kind that may be considered likely to assist any of the business which the Company is authorised to carry on.

28. To improve, manage, develop, exchange, lease, mortgage, dispose of or turn to account, or otherwise deal with all or any part of the property and rights of the Company.

29. To acquire from any person, firm or body corporate whether in India or elsewhere technical information, know-how, processes, engineering, manufacturing and operating data, plans, lay outs and blue prints useful for the design, erection and operation of plant required for any of the business of the Company and to acquire any grant of licence and other rights and benefits in the foregoing matter and things.

30. To enter into collaboration arrangement to acquire technical know-how and/or any financial assistance and/or to acquire any plant or machinery and/or to manufacture and/or fabricate and/or produce and/or assemble any plant and/or machinery and/or equipment under any such agreement.

31. To enter into any arrangement with any Government or authority, central, state, local or foreign or public body, or person or authority or from any private individual that may seem conducive to the Company's objects or any of them and to obtain from any such Government, authority, person or company any concession, grants, decrees, rights, charters, contracts, licences, powers and privileges, whatsoever which may seem to the Company capable of being carried on in connection with its business, and to work, develop, carry on, exercise and turn to account the same.

32. To give credit to such persons or companies and on such terms as may seem expedient and in particular to customers and other having dealings with the Company and to guarantee the performance of any contract or obligation and the payment of money of or by any such persons of companies and generally to give guarantee and indemnities.

33. To enter into, make and perform contracts of every kind and description, agreement and arrangement with any person, firm, association, corporation, municipality, country, state body or Government or colony or dependency thereof.

34. To apply for, promote and obtain any statute order, regulation, other authorisation or enactment which may seem calculated directly or indirectly to benefit the Company and to oppose any bills, proceedings, or applications which may seem calculated directly or indirectly to prejudice the Company's interest.

35 To establish competitions in respect of contributions or information suitable for insertion in any publications of the Company, or otherwise for any of the purpose of the Company, and to offer and grant prizes, rewards and premiums of such character and on such terms as may seem expedient.

36. To procure the recognition of the Company under, the laws of regulations of any other country and to all acts necessary for carrying on any business or activity of the Company in any foreign country.

37. To obtain any provisions order Act of the Government for enabling the Company to carry on any of its objects into effect or for effecting any modification of the Company's constitution.

38. To refer to or agree to refer any claims, demand, dispute or any other question by or against the company or in which the company is interested or concerned, and whether between the company and the member or members or his or their representatives, or between the company and third parties, to arbitration and to observe and perform and to do all acts, deeds, matters and things to carry out or enforce the awards.

39. Subject to the provisions of the Companies Act, 1956, to invest and deal with the surplus moneys of the Company not immediately required in such manner determined by the Company

40. To make donations to such persons or institutions and in such cases and either or cash or any other assets as may be thought directly or indirectly conducive to any of the Company's objects or otherwise expedient and in particular to remunerate any person or corporation introducing business to this Company, and also to subscribe, contribute or otherwise assist or guarantee money for charitable, scientific, religious or benevolent, national, public or other institution objects or for any exhibition or for any public, general or other objects subject to the provisions of the Companies Act, 1956

41. To undertake, carry out, promote and sponsor or assist any activity for the promotion and growth of national economy and for discharging social and moral responsibilities of the Company to the public or any section of the public as also

any activity which is likely to promote national welfare or social economic or moral uplift of the public or any section of the public and in such manner and by such means as the Company may think fit and the Company may in order to implement any of the above mentioned objects or purposes transfer without consideration or at fair or concessional value and divest the ownership of any property and the Company to or in favor of any Public or Local Body or Authority or Central or State Government or any Public Institutions or Trusts or any other agency devoted to the work of rural development.

42. Without prejudice to the generality of forgoing, to undertake, carry out, promote and sponsor any activity for publication of any books, literature, newspapers etc., or for organising lectures, conferences or seminars, workshops, training programmes, etc., likely to advance the aforesaid objects or for giving merit awards, scholarships, loans or any other assistance to institutes, deserving students or academic pursuits or researches and for establishing, conducting, assisting any institution, fund, trust, having any one of the aforesaid objects as one of its objects.

43. To insure the whole or any part of the property of the Company either dully or partially to protect and indemnify the Company from liability or loss in any respect either fully or partially and also to insure and to protect and indemnify any part or portion thereof either on mutual principle or otherwise.

44 To acquire any shares, stock, debenture stock, bonds, obligations or securities by original subscription, render, purchase, gift, exchange or otherwise and to subscribe for the same either conditionally or otherwise and to guarantee the subscription thereof, and to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof.

45. To pay all preliminary expenses of any company promoted by the Company or any company in which the Company is or may contemplate being interested including in such preliminary expenses all or any part of the cost and expenses of owners of any business or property acquired by the Company.

46. To carry on the business or branch of business which this Company is authorised to carry on by means or through the agency of any company or companies and to enter into any arrangement with any such company for taking the profits and bearing the losses of any business or branch so carried on, or for financing any such company or guaranteeing its liabilities, or to make any other arrangements, which may seem desirable with reference to any other business or branch so carried on including power at any time either temporarily or permanently to close any such business or branch and/or to appoint directors or managers of any such subsidiary company.

47. To take or concur in taking all such steps and proceedings as may seem best calculated to uphold and support the credit of the Company and to obtain and justify public confidence and to avert or minimize financial disturbances which might affect the Company.

48. To subsidise, assist and guarantee the payment of money by or the performance of any contract, engagement or obligation by any person or companies and in particular customers of the Company or any person or companies, with whom the Company may have or intend to have business relations.

49. Subject to the provisions of the Companies Act, 1956, to vest any real or personal property, rights or interest acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company and with or without any declared trust in favor of the Company.

50. Subject to the provisions of the Companies Act, 1956 or any other law for the time being in force, to distribute in specie or otherwise as may be resolved any property or assets of the Company of any proceeds of sale or disposal of any property or assets of the Company including the shares, debentures, or other securities of any other company formed to take over the whole or any part of the assets or liability of the Company.

51. The Company may, at any time invite and receive or without any such invitation receive any gifts of immovable or movable property and offering or voluntary donations or bequests and legacies either from the shareholder or from any other person for all or any of the objects of the Company with or without any special conditions provided such receipts or the condition attached are not inconsistent with or derogatory to any of the objects of the Company, subject any such conditions as aforesaid, all such gifts, donations, grants, offerings, legacies and bequests including lands, buildings, and other immovable properties shall be treated as forming part of the property of the company and be applied accordingly. The Directors shall in their absolute discretion be entitled to decide whether they shall invite or accept any such gift, donation, grant, offering, legacy or bequest and they shall be at liberty to refuse any of them without giving any reason for such refusal.

(C) **THE OTHER OBJECTS OF THE COMPANY NOT INDICATED IN 'A' AND 'B' ARE :-**

1. To act as collaborators, managers, representatives, shipping and transporting agents and to take up all kinds of agencies of companies, corporations and institutions registered n. India or outside or firms or any other persons.

2. To start or carry on the publication of dailies, periodicals, books, pamphlets and publications of every description including souvenir, Acts of Parliament or State Legislatures, Government Notifications, Rules and Orders.

3. To carry on business as Commission agents.

4. To carry on business of Carriers and Warehousemen and forwarding agents.

5. To carry on the business of advertising contractors and agents, to acquire and dispose of advertising, time, space, or opportunities on any media to undertake advertising and promotional requisites of every kind and description.

6. To carry on either directly or by others the business or businesses whether together or separately or restaurant, sodafountain, icecream parlour, milkbar and café proprietors, wine, beer and spirit merchants, manufacturers and vendors of mineral water, aerated waters, and syrups; groceries and provisions and of refreshment carters, suppliers and contractors generally.

7. To carry on all or any of the business of entertainment promoters, sports promoters and in all or any sphere of entertainment and sport.

8. To produce, distribute, or otherwise deal in documentaries, audio visual motion pictures and other mass media communication.

9. To print, publish or cause to be printed or published any words, song, or music of which the Company has a copy right to publish and to sell and distribute and deal with any matter so printed as the Company may think fit and to grant licences or rights in respect of them to any company or any other person.

10. To carry on all of the business of shop merchants and growers, malt factors, corn merchants, wine and spirit merchants and importers, and distillers, coopers, and bottlers, bottle makers, bottle stopper makers, potters, manufacturers of and dealers in aerated and mineral waters, and other drinks, licenced victuallers, hotel keepers, beer house keepers, restaurant keepers, lodging house keepers, ice manufacturers and merchants, tobacconists, farmers dairymen, yeast dealers, grain sellers and driers, timber merchants, brick makers, fining manufacturers, and isinglass merchants.

11. To carry on all or any business of dairymen, cheese, butter, egg and sausage manufacturers and merchants, baconcurers, poultry and live stock breeders, butchers, barkers, farmers, grocers and general provision merchants and dealers.

12. To establish and run rice mills, flour mills, confectioneries and biscuit factories.

13. To deal in sea goods and marine products in fishing, including deep sea fishing, fish culture, aquaculture, fish farming and own and deal in fishing trawlers, fishing boats and allied activities and machineries.

14. To carry on the business as fleet operators and engage in allied activities and own transport and Commercial Vehicles.

15. To carry on the business of a water-works company in all its branches and to sink wells and shafts, and to make, build and construct, lay down and maintain dams, reservoirs, water-works, cisterns, culverts, filter-beds, mains and other pipes and fittings and appliances, cement tiled and marbles, figured or plain, coloured or white to fix them or decorate, and to execute and to execute and do all other acts and things necessary or convenient for obtaining, storing, selling, delivering, measuring, distributing and dealing in water.

16. To carry on the business of Man Power Planning and Recruitment and Human Resources Development for firm, Company, Body Companies, Association, Government or other persons both in India and abroad.

IV. The liability of the members of the Company is limited.

V. The Share Capital of the Company is Rs.10,00,000/- (Rupees Ten Lakhs only) divided into 1,00,000 (One lakh) Equity Shares of Rs.10/- (Rupees Ten only) each with such rights, privileges, and conditions respectively attached thereto as may from time to time conferred by the regulations of the Company with power to increase and reduce the capital of the Company and to divide the shares in the capital of the Company into several classes and to attach thereto respectively such preferential, qualified or special rights, privileges or conditions as may be determined by or in accordance with the regulations of the Company and to vary, modify or abrogate any such rights, privileges or conditions, in such manner, as may for the time being provided by the regulations of the Company.

VI. We, the several persons whose names and addresses are hereunder subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Sl. No.	Signature, Names, Addresses Description & Occupation of the Subscribers	No. of Equity Shares taken by each subscriber	Signature, Name, Address Description & Occupation of the witness
1.	Mr. A. MALLESH RAO, S/o. Mr. A.K. Rao, 46,Kasturi Ranga Road, Chennai – 600 018 Business PAN : ABQPA4151P	5000 (Five Thousand only)	D. MOHANA SUNDARAM S/o. P.M. Devan, 10A, Vivekananda Street, Radha Nagar, Chromepet, Chennai – 600 044. Practicing Company Secretary. CP 3672
2.	Mr. C.N. ANANTHAKRISHNAN S/o. Mr. C.A. Natarajan 32, Veerabadran Street, Nungambakkam, Chennai – 600 034. COMPANY EXECUTIVE PAN : AAAPA4133 G	5000 (Five Thousand only)	
	TOTAL	**10000**	

PLACE : Chennai

DATE : 3.11.2004

CERTIFIED THAT, THIS IS THE NEW SET OF ARTICLES OF ASSOCIATION, DULY ADOPTED BY THE SHAREHOLDERS ATTHEIR MEETING HELD ON 12TH DECEMBER, 2004, SUBSTITUTING NEW CLAUSES 1 TO 29, IN THE PLACE OF CLAUSES 1 TO 27.

Under the Companies Act, 1956
(Company Limited by Shares)

ARTICLES OF ASSOCIATION

OF

ENNORE TANK TERMINALS PRIVATE LIMITED

PRELIMINARY

1. Subject as hereinafter provided, the regulations contained in Table A in the Schedule I of the Companies Act, 1956 (hereinafter referred to as Table A) shall apply to the Company to the extent applicable to private companies and excluding those applicable to public companies.

2. Regulations 21, 26 to 43, 64, 66 and 70 of Table A shall not apply to the company and Clauses hereinafter containing shall be applicable.

3 DEFINITIONS

In the interpretation of these Articles, the following expressions shall have the following meanings unless repugnant to or inconsistent with the subject or context.

"The Act" means the Companies Act, 1956 or any statutory modification or re-enactment thereof for the time being in force.

"The Board of Directors" or "The Board" means the Board of the Director duly called and constituted of the Directors for the time being of the Company or as the case may be, the Directors assembled at a Board meeting.

"Company" means ENNORE TANK TERMINALS PRIVATE LIMITED

"Dividend" includes interim dividend.

"Extraordinary General Meeting" means an Extraordinary General meeting of the members duly called and constituted and any adjourned holding thereof.

"In Writing" and "Written" include printing, lithography and other modes of representing or reproducing words in a visible form.

"General Meeting" means a general meeting of the members held in accordance with the provisions of the Section 166 of the Act.

"Licensee" means ENNORE TANK TERMINALS PRIVATE LIMITED.

"Licensor" means ENNORE PORT LIMITED, a company registered under the Companies Act 1956

"License" means the license granted by the Licensor to the Licensee, in accordance with the provisions of the agreement for implementing the project

"The Managing Director" means the Managing Director for the time being of the Company.

"Member" means the registered holder from time to time of the shares in the capital of the Company and includes a subscriber of the Memorandum of Association of the Company

"Month" means calendar month

"The Office" means the Registered Office for the time being of the Company.

"Ordinary Resolution" and "Special Resolution" shall have meanings assigned thereto by Section 189 of the Act.

"Paid-up" in relation to the Share Capital of the Company includes credited as paid-up.

"Proxy" includes Attorney duly constituted under a Power-of Attorney.

"The Registrar" means the Registrar of Companies of the State in which the office of the Company is for the time being situate.

"Register" means the Register of members to be kept pursuant to the Act.

"Seal" means the Common Seal of the Company.

"Share" means share in the share capital of the Company and shall include stock except where a distinction between shares and stock is express or implied.

All other terms, unless otherwise defined shall have the same meaning as defined in the agreement between the Licensee and the Licensor.

Unless the context otherwise requires, the words or expressions contained in these articles shall bear the same meaning as in the Act.

Words importing the singular number only include the plural number and vice versa.

Words importing persons include corporations.

4. The Company is a private Company within the meaning of Section 3(1)(iii) of the Companies Act 1956 and accordingly,

(a) The Minimum paid-up capital of the Company shall be Rs.1 Lakh or such higher amount as may be prescribed and

(b) By its Articles,

(1) Restricts the right to transfer its shares, if any.

(2) Limits the number of its Members to fifty not including

(i) Persons who are in the employment of the Company; and

(ii) Persons who, having been formerly in the employment of the Company, were Members of the Company while in that employment and have continued to be Members after the employment ceased; Provided that where two or more persons hold one or more shares in a company jointly, they shall for the purpose of this definition be treated as a single member.

(3) Prohibits any invitation to the public to subscribe for any shares in, or debentures of the Company, and

(4) Prohibits any invitation or acceptance of deposits from persons other than its Members, Directors or their relatives.

SHARES

5. The Authorised Share Capital of the Company is Rs.10,00,000/- (Rupees Ten Lakhs only) divided into 1,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each with power to increase or reduce the Capital

6. The shares shall be under the control of the Directors who may allot or otherwise dispose of the same

7. The business of the Company may be commenced soon after the incorporation of the Company as the Directors may think fit and notwithstanding that part of the shares have been allotted.

8 SHARE HOLDING PATTERN

a) The aggregate equity shareholding of the Consortium Members in the Licensee will be at no point of time be less than 51% till the issue of completion certificate

b) The lead consortium member, whose financial strengths were credited during the bid process, holds an equity stake of not less than 26 % in the Licensee at least for a period of 5 calendar years from the date of commercial operations

c) The significant consortium member, whose financial strengths were credited for evaluation , will continue to maintain an equity stake of not less than 26 % in the Licensee till the date of completion of certificate.

d) A consortium member, whose strengths were credited for technical evaluation , will continue to maintain an equity stake of not less than 11% in the Licensee at least for a period of 3 calendar years from the date of commercial operation

e) The equity shareholding in the Licensee of the consortium members, whose financial strengths were credited during the bid process, will at no point be less than 51 % till at least for a period of 5 calendar years from the date of commercial operations.

f) Any change in equity stake of a lead consortium member, significant consortium member, consortium Member, and making a public offer shall be communicated to the Licensor in writing for its prior approval.

g) Any subsequent change in the Articles which alter the provisions required by the foregoing share holding pattern shall require the prior approval of the Licensor.

TRANSFER OF SHARES

9. Subject to complying of Article 8, any members desiring to sell any of his shares must notify the Board of Directors of the number of shares, the market price and the name of the proposed transferee and the Board must offer to the other shareholders the number of shares shall be transferred to the acceptor or acceptors, and if the shares or any of them are not so accepted, within one month from the date of notice of the Board the holder may sell or transfer them or any of them at the same or higher price to third parties. In case of any dispute regarding the market price of the shares, it shall be decided and fixed by the Company's Auditor whose decision shall be final

DIRECTORS

10. Until otherwise decided by the General Body, the number of Directors shall not be less than two or more than twelve.

11. The First Directors shall be:

    1 Mr. A. MALLESH RAO
    2. Mr. C.N. ANANTHAKRISHNAN

12. Any person, whether a member of a company or not may be appointed as a Director. No qualification by way of holding shares in the Capital of Company shall be required of any Director.

13. Any Directors shall have the power from time to time to appoint any other persons to be Directors, but so that the total number of Directors shall not at any time exceed the maximum number fixed as above and the Director so appointed shall hold office only upto the date of next Annual General Meeting of the Company

14. The remuneration of each Director shall be such remuneration as the Board of Directors may determine.

15. The directors shall be paid any traveling expenses incurred to attend Directors Meeting, or meeting of the Committee or the Board of the Directors.

POWERS AND DUTIES OF DIRECTORS

16. The powers and responsibilities of the Directors of the Company shall be as in the Companies Act 1956 and in Table-A thereof except on so far as they stand modified by the provisions of these Articles.

17. **COMMITMENTS, OBLIGATIONS AND RESPONSIBILITIES**

The Licensee, lead consortium member, significant consortium member and consortium member shall duly undertake and fulfill all the commitments and obligations and discharge the responsibilities, duly agreed and entered with the Licensor and among themselves , in any kind of documents, agreements, deeds and other writings , by what ever name called.

MANAGING DIRECTOR

18. The Director may from time to time appoint one or more of their body to the office of Managing Director for so long as he shall hold the office of a Director upon such conditions as they may think fit, but his appointment shall subject to determination by the Directors and shall be determined ipsofacto if he ceases from any causes to be a Director or if the Company in General Meeting shall pass a Special Resolution that his tenure of the office of Managing Director be determined. The Directors may from time to time entrust to and confer upon a Managing Director, such of the powers exercisable under these article by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes and, upon such terms and conditions, and with such restrictions as they may think expedient and may from time to time revoke, withdraw, alter or vary all or any of such powers.

BORROWING POWERS

19. Subject to Section 292 of the Companies Act, 1956 the Board of Directors may from time to time raise or borrow any sums of money and on behalf of the Company from the members or the other persons, Companies or Banks or they may themselves advance money to the Company on such terms and conditions as may be approved by the Directors.

20. The Board of Directors may, from time to time, secure the payment of such money in such manner and upon such terms and conditions in all aspects as they think fit and in particular by issue of debentures or bonds of the Company or by mortgage or charge of all or any part of the property of the Company and its uncalled Capital for the long time being.

21. Any debentures, bonds or other securities may be issued at discount, premium otherwise and with special privileges as to the redemption, surrender, drawing, allotting of shares, attending and voting at General Meeting of the Company and otherwise

RETIREMENT OF DIRECTORS

22. At the First Annual General Meeting of the Company the whole of the Directors shall retire from office and at every subsequent Annual General Meeting one-third of the Director shall retire by rotation for the time being or, if their number is not three or multiples of three, then the number nearest to one-third shall retire from office. The directors to retire by rotation shall be those who have been in office since their last appointment but as between persons who become Directors on the same day those who are to retire shall in default of and subject to any agreement among themselves be determined by lot.

23. If at any meeting at which an election of the Directors ought to take place the places of the vacating Directors are not filled up, the Meeting shall stand adjourned till the same day in the next week at the same time and place, and if at the adjourned meeting the places of the vacating Directors are not filled up shall be deemed to have been re-elected at the adjourned meeting.

24. Any casual vacancy occurred in the Board of Directors, may be filled up by the remaining Directors or Director or Managing Director as the case may be but any person so chosen shall retain his office until the next following Annual General Meeting of the Company and shall be eligible for re-election.

PROCEEDING OF DIRECTORS

25. The Quorum necessary for the transaction of the business of the Directors shall be two or one third of the total strength (any fraction contained therein being rounded off as one) whichever is higher.

THE SEAL

26 The Company shall have a Common Seal and the Directors shall provide for the safe custody thereof. The seal shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and in the presence of two Directors who shall sign every instrument to which the seal shall be affixed in their presence, such signatures shall be conclusive evidence of the face that the seal has been properly affixed.

ACCOUNTS

27. The Directors shall cause true accounts to be kept.

a) of the assets and liabilities of the Company and

b) of all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place.

c) All sales and purchases of goods by the Company.

The Books of accounts shall be kept at the Registered Office and shall always be open to the inspection of Director.

AUDIT

28. Once at least in every year the accounts of the company shall be examined and audited by any Auditor duly appointed under 224 and 224A of the Companies Act, 1956.

29. The Remuneration of the Auditor shall be fixed by the Company in General Meeting except that the remuneration of any first auditors appointed by the directors or any casual vacancy filed by them may be fixed by the directors.

Sl. No.	Signature, Names, Addresses Description & Occupations of the Subscribers	Signature, Name, Address Description & Occupation of the witness
1.	**A. MALLESH RAO** S/o. Mr. A K Rao (Old No. 46) 18. Kasturi Ranga Road. Alwarpet, Chennai – 600 018 Business PAN : ABQPA4[illegible]P	D. MOHANA SUNDARAM S/o. P.M. Devan, 19A, Vivekananda Street, Radha Nagar, Chromepet, Chennai – 600 044. Practicing Company Secretary. CP 3672
2.	**C.N. ANANTHAKRISHNAN** S/o. Mr. C.A. Natarajar. 32. Veerabadran Street, Nungambakkam. Chennai. – 600 034. Service PAN : AAAPA4133G	

Date : 3.11.2004

Place : Chennai

IMC LIMITED
Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018, India Tel : 2499 4880, 2466 1892
Fax: 91- 44-2466 1738 E-Mail : imcl@giasmd01.vsnl.net.in URL : www.thermegroup.com

9-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal – RFP No.EPL/45-C/2002 – Authorization for SPV

We, IMC-L&T Consortium, hereby authorize Ennore Tank Terminals Private Limited, with its Registered Office at 39, Kasturi Ranga Road, Alwarpet, Chennai 600 018, to enter into and sign the Licence Agreement for the above Project with Ennore Port Limited and execute the Project as per the terms and conditions stipulated in the RFP documents and Licence Agreement.

Copies of certificate of incorporation and certified true copies of Memorandum and Articles of Association have already been forwarded to you on 3-Nov-2004.

It is proposed to sign the Agreement at your office after 3 p.m on 10-Nov-2004.

Thanking You

Yours truly,
for **IMC-L&T Consortium**

Anand Rangamurti
General Manager

IMC LIMITED LLP
Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018 India Tel : 2499 4880, 2466 1632
Fax: 91 - 44-2466 1738. E-Mail : imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

9-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal – RFP No.EPL/45-C/2002 – SPV Address

This is to confirm that the Registered Office Address of the SPV incorporated for the above Project is as below:

Ennore Tank Terminals Pvt. Ltd.
39, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Tel : 044 - 2499 4880
Fax : 044 - 2466 1738

This is for your information and records.

Thanking You

Yours truly,
for **IMC-L&T Consortium**

Anand Raggamurti
General Manager

IMC LIMITED

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India. Tel : 2499 4080, 2466 1892
Fax. 91- 44-2466 1738. E-Mail : imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

9-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal – RFP No.EPL/45-C/2002 – Power of Attorney from the SPV

Please find enclosed Power of Attorney from the SPV, Ennore Tank Terminals authorizing Mr. Anand Ranganurti and Mr.N.Krishnan to sign documents and deal with Ennore Port Ltd for the above Project.

We are also enclosing letter from Larsen & Toubro Ltd. Confirming the SPV and authorizing the SPV to sign the License Agreement.

Thanking You

Yours truly
for IMC-L&T consortium

Anand Ranganurti
General Manager

LARSEN & TOUBRO LIMITED
Engineering Construction & Contracts Division
Headquarters : Mount Poonamallee Road, Manapakkam
P.B.No.979, Chennai - 600 089, INDIA
Tel. : +91-44-2249 2747 / 3318 Fax : +91-44-2249 3317

Ref.
E-mail
Website : www.lntecc.com
www.larsentoubro.com

LTCD/DPBU/PORTS/MLT-EPL/4

November 9, 2004

M/s Ennore Port limited
15, KasturiRangan Road,
Alwarpet,
Chennai 600018

Dear Sir,

Reg.: Authorization for Signing the License Agreement for Development of Marine Liquid terminal on BOT basis at Ennore port

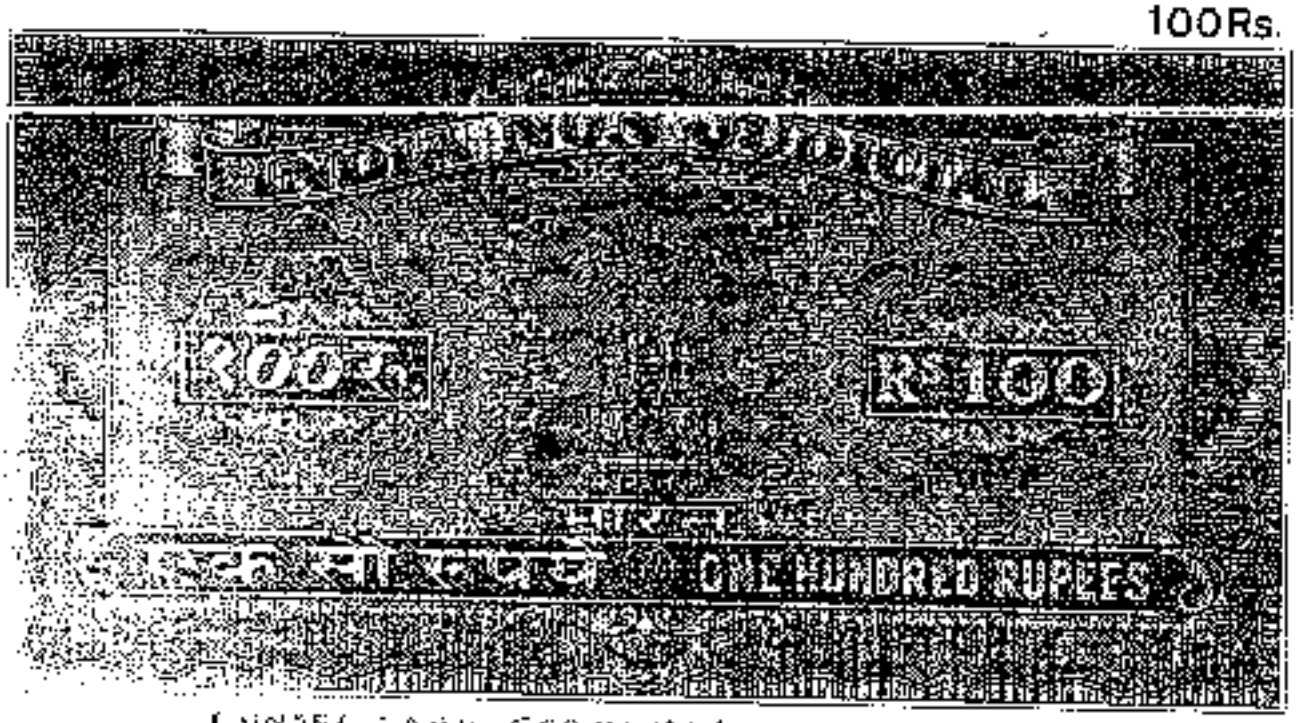
We hereby designate Mr. Anand Ranganurti, General Manager, IMC Limited to sign the License agreement for the above project on behalf of the consortium representing IMC Limited and Larsen & Toubro Limited

The license agreement is being signed thro the SPV formed for this project M/s. Ennore Tank Terminals Private Limited

For **LARSEN & TOUBRO LIMITED**

(K. VENKATESH)
VICE-PRESIDENT (DEVELOPMENTAL PROJECTS)
ECC DIVISION

100Rs.



ENNORE TANK TERMINALS PRIVATE LIMITED

A. ROUFBASHA, B.A.,
STAMP VENDOR, Lic. No. 6/83/97
New No. 17, Old No. 9,
P.P.V. KOIL STREET, MYLAPORE,
CHENNAI - 600 004. Ph : 24982427

S 11 2004

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY dated 8th day of November 2004, We Ennore Tank Terminals Private Limited, an existing Company within the meaning of the Companies, Act, 1913 having its Registered Office at New No. 39, Kasturi Ranga Road, Alwarpet, Chennai – 600018 (hereinafter called "the Company") represented by its Director Shri. C.N. Ananthakrishnan do hereby appoint, nominate and constitute **Shri. Anand Ranganurti** aged about 41 years son of Shri. K.S. Ranganurti residing at Flat No. 82, IInd Floor, Bay Castle, 131/7, Padmanabha Nagar, Besant Nagar, Chennai 600020 and **Mr. N. Krishnan** aged about 36 years son of Shri. S. Nagarajan residing at Sri Durgai, 22, Vasan Street, Chennai – 600 011 as our attorney in our name and on our behalf to do the following acts **INDIVIDUALLY**: -

1. to provide information and respond to enquiries, etc. as may be required by the Ennore Port Limited or any Governmental Authority for the Common-User Marine Liquid Terminal on B.O.T. basis at Ennore Port, India.

Contd. . . 2.

S. SRIDHAR, B.A., B.L.
5, RAMASAMY ST.
REPON PET(E)
CHENNAI-600 012
Ph: 2615...

For ENNORE TANK TERMINALS PVT. LTD.

Director

2. to sign any applications, documents or declarations as may be required by the said Authorities or as the Attorney holder may deem fit.

3. to generally do all such acts as may be necessary to carry out the above intention.

4. the Attorney holder's specimen signatures are given below:-

Name of the Attorney	Signature
1. Shri. Anand Rangamurti	
2. Shri. N. Krishnan	

The Company do hereby agree to confirm and ratify all acts done or performed by the said Attorneys by virtue by this Power of Attorney.

IN WITNESS WHEREOF the above named Donor, Ennore Tank Terminals Private Limited execute these presents on the 8th day of November 2004.

The Common Seal of the Company was hereunto affixed in the presence of Mr. Mr. C.N. Ananthakrishnan, Director on this the 8th day of November 2004:

for ENNORE TANK TERMINALS PRIVATE LIMITED

C.N. ANANTHAKRISHNAN
DIRECTOR

FOR ENNORE TANK TERMINALS PVT. LTD.

Director

WITNESSES:

1. S. GANESAN
No. 9/2, South Canal Bank 2nd Street,
Mandavelipakkam,
R.A. Puram
Chennai 600 028.

2. K.R. RAMESH
Modern Apartments, Flat No. F1,
New No.3/200, Mylavakkam Main Rd.,
Madipakkam,
Chennai 600 091.

S. SRIDHAR
ADVOCATE

S. SRIDHAR, B.A., B.L.
5, RAMASAMY ST.
GOPALAPURAM

IMC LIMITED
Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India. Tel : 2499 4830 2466 1892
Fax: 91-44-2466 1738. E-Mail: imel@glasmd01.vsnl.net.in URL : www.thomsegroup.com

10-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal - RFP No.EPL/45-C/2002 – SPV

We are enclosing copy of letter from L&T confirming their Board has approved the investment in the SPV and their share of equity investment in the SPV.

Kindly acknowledge receipt.

Thanking You

Yours truly,
for **IMC-L&T consortium**

Anand Ranganmurti
General Manager

LARSEN & TOUBRO LIMITED
Engineering Construction & Contracts Division
Headquarters : Mount Poonamallee Road, Manapakkam
P.B No 979 Chennai - 600 089, INDIA
Tel:- +91-44-2249 2747 / 3515 Fax :+91-44-2249 3517

Web site : www.elecc.com
www.larsentoubro.com

Ref

E-mail

LTCD/DPBU/PORTS/M_T-EPL/5

November 9, 2004

M/s. MC LIMITED
15 Kasturi Rangan Road,
Alwarpet,
Chennai 600018

Dear Sir,

Sub: Proposed Common Liquid Terminal at Ennore Port

Ref: 1. Your letter dated November 8, 04
2. Copy of letter submitted to EPL dated Nov. 9, 04

This has reference to your above letters reg Formation of SPV for the implementation of the above project.

We enclose herewith a Cheque for Rs. 26, 000/- drawn in favour of the SPV M/s. Ennore Tank Terminals Private Limited towards equity investment (being 2600 equity shares @ Rs 10/- per equity share) Kindly allot the shares in favour of M/s L&T Holdings Limited and send us the required documents.

As per our MOU the equity is being invested by our investment arm M/s. L&T Holdings Limited. We confirm that the board of L&T HOLDINGS LIMITED has approved the above investment. The resolution towards the above will be forwarded to you shortly

For LARSEN & TOUBRO LIMITED

(K. VENKATESH)
VICE-PRESIDENT (DEVELOPMENTAL PROJECTS)
ECC DIVISION

IMC LIMITED
Corporate Office: 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India. Tel : 2499 0839, 2466 1892
Fax: 91- 44-2466 1730. E-Mail: imcl@glasmd01.vsnl.net.in URL : www.thelmcgroup.com

10-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal – RFP No.EPL/45-C/2002 – Extract from the Minutes of Board Meeting of SPV

Please find enclosed certified true copy of the Extract from the Minutes of the Board Meeting of Ennore Tank Terminals Pvt. Ltd. held on 9-Nov-2004.

This is for your information.

Thanking You

Yours truly,
for IMC-L&T Consortium

Anand Rangamurti
General Manager

ENNORE TANK TERMINALS PRIVATE LIMITED
Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India. Tel : 2466 4883, 2466 1892
Fax: 91-44-2466 1738. E-Mail: imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

EXTRACT FROM THE MINUTES OF THE BOARD MEETING OF ENNORE TANK TERMINALS PRIVATE LIMITED HELD AT THE REGISTERED OFFICE OF THE COMPANY AT NEW NO 39, KASTURI RANGA ROAD, ALWARPET, CHENNAI - 600 018 ON TUESDAY THE 9TH DAY OF NOVEMBER, 2004 AT 3.30 P.M.

The Board took note of the request for proposal (RPF) No EPL/45-C/2002 issued by Ennore Port Limited for Selection of a Developer to Design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer the proposed Common-User Marine Liquid Terminal at Ennore Port, Chennai. The Board also took note of the addendums issued in February, 2004, April 2004 and May 2004, respectively by Ennore Port Limited. The Board also took note of the Letter of Intent EPL/45-C/2002 dated 12th October, 2004 (LOI) issued by Ennore Port Limited to IMC Limited, the Lead Consortium Member of the Consortium formed by IMC Limited and Larsen & Toubro Limited, communicating the selection of the said consortium represented by IMC Limited and Larsen & Toubro Limited as a preferred bidder for the development and implementation of the project referred to in the said LOI in response to the detailed Techno-Commercial proposal submitted by the Consortium. After discussions, the following resolutions were passed unanimously:

"RESOLVED THAT the responsibilities and obligations of the Consortium comprising IMC Limited and Larsen & Toubro Limited with regard to the RPF No. EPL/45-C/2002 issued by Ennore Port Limited, in connection with the Project to Design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer the proposed Common-User Marine Liquid Terminal at Ennore Port, Chennai be taken over fully by the Company which will hereafter be the Special Purpose Vehicle (SPV) for the said Project."

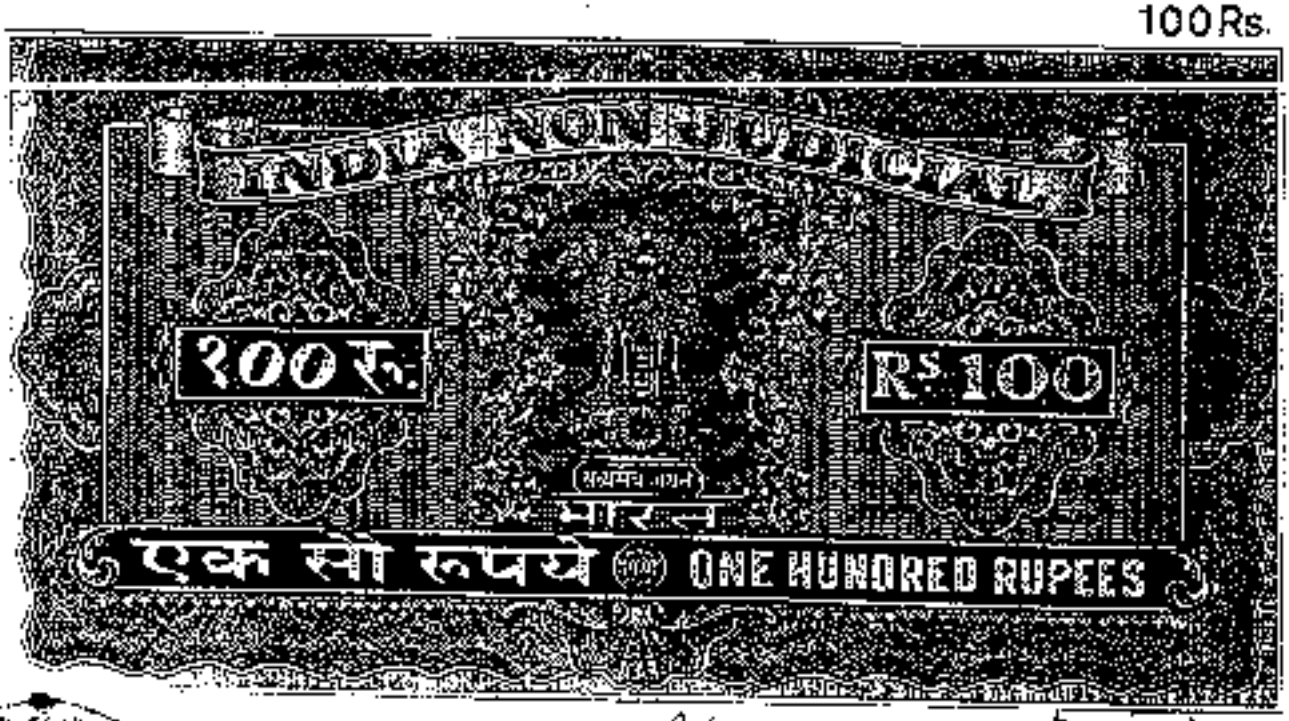
"RESOLVED FURTHER THAT Mr. Anand Rangamurti or Mr. N. Krishnan, the authorized representatives of the Company be individually authorized to do all acts in connection with the Project to Design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer the proposed Common-User Marine Liquid Terminal at Ennore Port, Chennai referred to in the LOI EPL/45-C/2002 dated 12th October, 2004 issued by Ennore Port Limited to the Consortium represented by IMC Limited and Larsen & Toubro Limited including signing the License Agreement and any other documents in connection therewith."

for ENNORE TANK TERMINALS PVT. LTD.

CERTIFIED TRUE COPY

Director

100Rs.



A-1002

L&T
Chennai - 89

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on this the 18th day of December, 2002

BETWEEN

IMC Limited, a Company registered under the Companies Act, 1956, having its Registered Office at 232/A, Acharya Jagdish Bose Road, Kolkata 700 020, hereinafter referred to as "**IMC**", which expression shall unless repugnant to the context or meaning thereof, include its subsidiaries, associates, successors and permitted assigns

AND

Larsen & Toubro Limited, an existing Company within the meaning of Section 3 of the Companies Act 1956, having its Registered Office at L&T House, Narottam Morarji Marg, Ballard Estate, Mumbai - 400001 and its EDC Division Headquarters Office at Mount Poonamallee Road, Manapakkam, Chennai - 600 089 (hereinafter referred to as "L&T" which expression shall wherever the context so permits mean and include its successors-in-interest and permitted assigns).

The expressions "L&T & IMC" shall, wherever the context admits, mean and include their respective successors-in-interest and assigns and shall collectively be referred to as 'the Parties" and individually as "the Party".

WHEREAS:

Ennore Port Limited (EPL), a company incorporated under the Companies Act, 1956 having its Registered office at 15, Kasturi Rangan Road, Alwarpet Chennai 600 018, invited applications for pre-qualification for "Selection of a Developer for Design, Engineering, Finance, Construction, Operation, Maintenance and Marketing a Common User Marine Liquid Terminal on Build, Operate & Transfer (BOT) basis at Ennore Port" , hereinafter called the "Employer" and Bidders have to submit their Request For Qualification (RFQ) in the specified format as per document RFQ No. EPL/45-C/2002.

IMC, having vast experience in constructing, operating and maintaining tank farms connected with Port-based third party storage for storing liquids and gases, and having invested in Port- based Infrastructure Projects desires to participate and submit RFQ for the said BOT Project of EPL.

L & T, being the largest Engineering and Construction Conglomerate in the country and having successfully implemented many Infrastructure Projects through ECC, its Engineering, Construction and Contract Division is desirous to participate in the BOT Project of EPL, as a Consortium member with IMC .

IMC and L&T have expressed their desire to associate exclusively for the purpose of submitting, as a Consortium, a pre-qualification application and, if successful, submit a tender for the execution of "Common User Marine Liquid Terminal on BOT basis at Ennore Port hereinafter referred to as the "Project")

WHEREAS the Parties have indicated their willingness to co-operate with each other with respect to preparing and submitting jointly to the Employer a bid for the Project and in the event of a Contract, being awarded to the Parties by the Employer, the Parties agree jointly to carry out the execution of the Project in accordance with the Contract and to the satisfaction of the Employer;

NOW, therefore, IMC and L&T hereby enter into a Memorandum of Understanding (MoU) (hereinafter referred to as MoU) and agree to the following terms of the agreement which are specified hereinafter: -

Clause 1 - PURPOSE OF THE MoU

IMC and L&T hereby form a Consortium jointly to bid for the Project right from RFQ stage and upon pre-qualification, will participate together in the successive stages of the bid process. In the event of the bid being accepted by the Employer, to enter into a detailed Contract and to execute the same to the satisfaction of the Employer. The Parties shall co-operate with each other to the maximum extent in order to secure the Project and thereafter to execute it successfully.

Clause 2 – LEAD CONSORTIUM MEMBER

IMC will be the Lead Consortium Member of the Consortium and shall be vested with the prime responsibility of developing the project. The Lead Consortium Member will be responsible for tying up all equity and debt requirements and for ensuring the total contribution of equity from the consortium members.

For the purpose of submitting the bid to the Employer, L&T hereby authorises IMC as the Lead Consortium Member to sign the tender documents on behalf of the Consortium.

Clause 3 - SCOPE OF WORK

IMC shall be the Lead Consortium Member with overall responsibility for Development of a Common User Marine Liquid Terminal at Ennore Port on BOT basis including Project implementation and its Operation and Maintenance thereafter.

L&T shall be responsible for the EPC works including Design of the Terminal including Marine Liquid Jetty, M&E Works, Mechanical Handling equipments and allied facilities, Construction, Erection and Commissioning of the BOT Project

The Parties shall submit competitive prices in order to obtain the award of the Contract. The Parties shall be jointly represented at the formal meetings with the Employer during Pre-Bid, Pre-Award and Post-Award discussions.

Clause 4 - DETAILED AGREEMENT

In the event the consortium gets pre-qualified, the Parties, will enter into a more detailed Consortium Agreement detailing the respective shares/scope of work and their internal liabilities, the price details and other terms and conditions prior to the submission of the final bid .

The Parties upon entering into a detailed Consortium Agreement will be responsible for their respective tax liabilities in respect of their individual scope of work.

Clause 5- FORMATION OF SPV

IMC & L&T agree to form a Special Purpose Vehicle (SPV) to implement the Project and the agreed Equity participation between IMC& L&T shall be as per the details given below viz..

IMC and its associates	:	74%
L&T and its associates	:	26%

L&T will bring its equity through its Investment arm "L&T Holdings Limited"

Clause 6 - EXCLUSIVITY

During the currency of this MoU, the Parties shall not enter into any similar agreement, in respect of the Project and/or discuss matters concerned under this MoU either directly or indirectly or through its subsidiary/associate or otherwise, with any other third party.

Clause 7- ASSIGNMENT

Neither Party shall assign or transfer any interest under this MoU, without the prior written consent of the other Party. However, a Party may assign work to a

subsidiary Company provided all approvals required from the Employer are obtained.

Clause 8 - LIABILITY

IMC and L&T shall be jointly and severally responsible/liable for the implementation and performance of the said works, if awarded to the Consortium and be liable for all their individual costs and expenses incurred in connection with their respective scope of work as provided in Clause 3 supra. The internal liabilities/responsibilities of the Parties will be set out in the detailed Consortium Agreement which shall be generally in line with the terms and conditions as set out in the Contract by the Employer. However, in case of any liquidated damages that may be imposed by the Employer, the Party responsible for the breach of the provisions of the Contract shall fully indemnify the other Party from and against all causes actions proceedings losses costs fees demands and expenses arising therefrom.

Clause 9 - DURATION OF THE MoU

This MoU shall be valid for a minimum period of 18 (eighteen) months from the last date of submission for RFQ for this project. Based on the Employer's request, the MoU may be extended for further period, subject to written confirmation by the parties. This MoU will be superseded upon the Parties entering into a more detailed Consortium Agreement. This MoU shall become null and void if -

a) the Employer abandons the Project
b) the Employer awards the Project to some other party
c) if the Parties are disqualified
d) if either Party is declared as insolvent by a Court of competent jurisdiction
e) at the expiry of 18 months or the extended period after submission of the RFQ documents to EPL

Clause 10 - CONFIDENTIALITY

Each of the Parties hereby warrants and undertakes with the other Party, that during the continuance and after determination of this MoU they will not, except with the consent of the other Party, use or disclose any information obtained by

either Party under this MoU unless and until such information becomes generally available to the public. Such Confidential Information shall not include information which:

(a) is or becomes publicly and widely known through no fault of the receiving Party;

(b) is or becomes available to the receiving Party without any obligation of confidentiality from any third party not having a confidential relationship with the disclosing Party with respect to the Confidential Information;

(c) is already known by the receiving Party without any obligation of confidentiality, provided that written evidence of such prior knowledge is provided by the receiving Party.

(d) is required to be disclosed by law or by an order of a competent Court.

(e) is required to be disclosed to the Employer to fulfill contractual obligations.

Clause 11 – MEETINGS OF THE CONSORTIUM

All meetings of the Consortium shall take place at a venue mutually decided by the Parties with participation by the authorised representatives of each Party. The meetings shall be properly minuted and signed by the authorised representative of each Party attending the meeting.

Clause 12 - FORCE MAJEURE

Neither Party will be responsible for non-performance of any or all of their obligations under this MoU if such non-performance is due to reasons beyond the reasonable control of the Parties. "Force Majeure" situations are also included in the expression "beyond the reasonable control of the Parties".

Clause 13 - PRE-AWARD EXPENSES

Each Party shall bear its own pre-award expenses.

Clause 14 - AMENDMENTS

Any amendments to this MoU shall be in writing and signed by the authorised representatives of each Party.

Clause 15 - NOTICES

All notices and communications shall be sent to the following addresses of the Parties:-

IMC

IMC Limited
39, Kasturi Renga Road
Alwarpet
Chennai – 600018
Tel: +91-44-4994880/4661892
Fax: +91-44-4661738

L&T

Larsen & Toubro Limited
ECC Division
Mount-Poonamallee Road
PB No. 979
Manapakkam,
Chennai 600 089
INDIA
Tel: +91-44-2492747
Fax: +91-44-2493317

Clause 16 - GOVERNING LAW

This MoU shall be governed and construed in accordance with the laws of India.

Clause 17 - DISPUTE RESOLUTION

Any dispute, controversy, claim or difference arising out or in connection with this MoU shall be settled amicably by negotiations between the authorised representative of each Party. If an amicable settlement cannot be reached, such dispute shall be referred to a panel of three arbitrators , one each to be appointed by each of the Parties and the two arbitrators so appointed shall appoint the Presiding Arbitrator. The venue of arbitration proceedings shall be Chennai, the proper law of arbitration shall be Indian Law, and the arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996. The Award rendered by the Arbitration Tribunal shall be final and binding on the Parties.

All arbitration proceedings conducted pursuant upon this Clause shall be conducted in the English language.

IN WITNESS WHEREOF the Parties hereto have signed this MOU on the day, month and year first above written.

For IMC LIMITED

Name: [illegible]

Designation: [illegible]

Witnesses: [illegible]

Name: [illegible]

For LARSEN & TOUBRO LIMITED

Name: K. VENKATESH

Designation [illegible]

K. VENKATESH
General Manager (Developmental Projects)
Larsen & Toubro Limited
ECC Division
Mount-Poonamallee Road
P.O. Box 979, Manapakkam
Chennai-600 089

Witnesses: [illegible]

Name: [illegible]

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018 India. Tel : 2499 4680, 2466 1832
Fax. 91-44-2466 1736. E-Mail. imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

7th August 2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn : Mr A.Rajagopalan – Director (Operation)

Dear Sirs

Sub: Selection of a Developer to design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer a Common – User Marine Liquid Terminal at Ennore port on Build Own and Transfer (BOT) basis at Ennore Port – No.EPL/45-C-2002

We had submitted Memorandum of Understanding (MoU) dated 18 Dec 2002, between IMC Limited and Larsen & Toubro Ltd., (L&T) as part of the RFQ/RFP documents for the above BOT project.

Please find enclosed Addendum to the said MoU, extending the validity for a further period of six (6) months upto 17th December 2004.

Kindly acknowledge receipt.

Thanking you,

for **IMC Limited**

S.Rangarajan
General Manager – Business Development

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India Tel : 2499 4800, 2466 5892
Fax: 91-44-2466 1738. E-Mail: imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

Date: June 16, 2004

Addendum to Memorandum of Understanding between IMC Limited and Larsen & Toubro Limited, dated 18 December 2002

The above Memorandum of Understanding (MoU) has been submitted by IMC Limited – Larsen & Toubro Consortium as part of their proposal for **"Selection of a Developer to Design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer a Common-User Marine Liquid Terminal at Ennore Port on Build Own and Transfer (BOT) basis at Ennore Port - No.EPL/45-C-2002**

In accordance with clause 9, both Parties hereby agree to extend the validity of the Memorandum of Understanding relating to the above Project for a further period of six (6) months upto 17th December 2004.

All other terms of the Memorandum of Understanding shall continue to remain in force.

for **IMC Limited**

S.Rangarajan
General Manager (Business Development)

for **Larsen & Toubro Limited**

(K. VENKATESH)
Vice President
Developmental Projects Business
ECC Division

IMC LIMITED

Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018 India. Tel : 2499 4660, 2466 1892
Fax : 91- 44-2466 1736. E-Mail. imcl@g.asmd01.vsnl.net.in URL : www.theimcgroup.com

9-Nov-2004

Ennore Port Limited
15, Kasturi Ranga Road
Alwarpet
Chennai 600 018

Kind Attn. : Dr.A.Rajagopalan – Director (Operations)

Sub : Common user Marine Liquid Terminal - RFP No.EPL/45-C/2002 – Extension of MoU dated 18-Dec-2002(read with addendum dated June 16,2004), between IMC Limited and Larsen & Toubro Ltd

As required, please find enclosed addendum confirming extension of MoU between IMC and L&T upto 31-Dec-2004.

Kindly acknowledge receipt

Thanking You

for **IMC-L&T Consortium**

Anand Rangamurti
General Manager

Date: November 9, 2004

Addendum to Memorandum of Understanding between IMC Limited and Larsen & Toubro Limited, dated 18th December 2002 and extension letter dated June 16, 2004

The above Memorandum of Understanding (MoU) has been submitted by IMC Limited – Larsen & Toubro Consortium as part of their proposal for "**Selection of a Developer to Design, Engineer, Finance, Construct, Operate, Maintain, Market and Transfer a Common-User Marine Liquid Terminal at Ennore Port on Build Own and Transfer (BOT) basis at Ennore Port – No.EPL/45-C-2002.**

In accordance with clause 9, both Parties hereby agree to extend the validity of the Memorandum of Understanding relating to the above Project upto 31st December 2004.

All other terms of the Memorandum of Understanding shall continue to remain in force.

for **IMC Limited**

(S. Rangarajan)
General Manager (Business Development)

for **Larsen & Toubro Limited**

(K. Venkatesh)
Vice President
Developmental Projects Business
ECC Division

Appendix 4: Schedule for Handover of the Licensed Premises

Sr. No.	Part of the Licensed Premises	Description	Date of Handover
First Required Part of the Licensed Premise			
1.	Waterfront area for jetty construction		**10/11/2004**
Subsequent Parts of the Licensed Premises			
2.	Waterfront area for trestle construction		**10/11/2004**
3.	Right of way for pipeline corridor		15 days from date of receipt of written request from the Licensee
4.	Land for Tankage Area		15 days from date of receipt of written request from the Licensee

Appendix 5: Format for Construction Guarantee

THIS GUARANTEE dated, [ ] day of [ ], 2004 ("the Guarantee") is issued by [ ], a banking company incorporated under the laws of [ ] and having its registered office/ [principal place of business] at [ ] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

ENNORE TANK TERMINALS PRIVATE LIMITED a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 39 Kasturirangan Road Alwarpet, CHENNAI – 600 018, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as prospective developer in respect of development of the Marine Liquid Terminal;

The Licensor and the Licensee have entered into a Licence Agreement dated 10/11/2004 (hereinafter referred to as "the Agreement" as may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to construct the Project within 24 months from the Zero Date in accordance with the terms of the Agreement.

Pursuant to Section 7 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper construction of the Project as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Construction Guarantee ("Guarantee")and the Guarantor hereby irrevocably and unconditionally issues this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder

For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of **Rs. 6,00,00,0000 (Indian Rupees Six Crore only)**, upon receipt of the Licensor' demand in writing and written statement stating:

a) that the Licensee has failed to fulfil its obligations under the Agreement, and

b) the amount of guarantee to be encashed as per the provisions of the Agreement.

II The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or not withstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceeding) relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

III. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of Section 7 of the Agreement the Licensor may invoke the Guarantee, in part or in full, at any time as it deems fit but not less than monthly intervals and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under the Agreement.

IV. In case the Licensor invokes the Guarantee in parts as per the provisions of Article III of the Guarantee, the Guarantor undertakes to keep the Guarantee valid for the amount equal to Rs. **6,00,00,000** less invoked amount of the Guarantee.

V. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exists any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VI. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VIII. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and/or the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

IX. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

X. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper construction of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement;

e) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

f) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

g) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

h) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

i) shall not be affected by any act, omission, matter or thing which, but for this clause (viii) would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XI. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, determents, reductions or defence for any reasne whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XII. This Guarantee shall remain in full force and effect till the Date of Commercial Operations. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIIa This Guarantee shall be valid for an initial period of [one year] and shall be renewed 20 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof]

XIIb In the event this Guarantee is not renewed in the manner provided in sub-clause XIIa above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], 2004.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

IMC Limited
Corporate Office : 39, Kasturi Ranga Road, Alwarpet, Chennai - 600 018. India Tel : 2499 4980, 2465 1992
Fax : 91 - 44 2466 1738 E-Mail: imcl@giasmd01.vsnl.net.in URL : www.theimcgroup.com

Date: 12th May 2006
Place: Chennai

The Director (Operations)
Ennore Port Limited
15, Kasturirangan Road
Alwarpet
Chennai 600 018

Dear Sir,

Sub: Proposal for selection of a Developer, to design, engineer, finance, construct, operate, maintain market and transfer a common user marine liquid Terminal on B-O-T basis at Ennore Port.

1. We, the undersigned Eligible Bidder, submit the following as our Commercial Proposal in response to the RFP issued by EPL.

	% of Gross Revenue*	
Revenue Share	**In numerals***	**In words***
	21.678	Twenty one point six seven eight

* No unites to be indicated in this column. For evaluation, the number mentioned will be considered as the percent of Gross Revenue, even if any other units are indicated

2. We confirm that our Commercial Proposal conforms to all the terms and conditions stipulated in the Request for Proposal.

3. We confirm that our Commercial Proposal is final in all respects and contains no conditions.

4. We confirm that in the event of more than one Technically Evaluated Responsive Bidders quoting the same price bid as per item (d), EPL shall break the tie by inviting a revised Commercial Proposal from the concerned bidders

..2..

5. We confirm that EPL shall have the option to invite the next highest ranked bidder for negotiations, and such decision would be final and binding, in the event

   (a) we fail or refuse to make the full payments of the Upfront Development Charge within the stipulated time (viz., 30 days from the issue of the Letter of Intent to it) and/or
   (b) we fail or refuse to execute the Licence Agreement within the stipulated time
   (c) we commit a material breach of any of the terms and/or conditions contained in the RFP and/or subsequent communication from EPL in this regard.

6. We confirm that, the information submitted in our Commercial Proposal is complete and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Proposal.

7. We confirm that we have studied the provisions of relevant Indian laws and regulations required to enable us to prepare this Commercial Proposal and as required to design, engineer, finance, construct, operate, maintain market and transfer the Terminal, in the event that we are finally selected.

Thanking you,

Yours sincerely

For and on behalf of : Consortium IMC Limited and Larsen & Toubro Limited

Signature :

Name of the Person : S. Rangarajan

Designation : General Manager (Business Development)

Appendix 7: Financing Documents and Original Schedule of Debt Servicing, as Approved by the Licensor



Appendix 8: Lease Agreement

This Lease made at Chennai this, the day of ___, 20_ **BETWEEN ENNORE PORT LIMITED**, a company incorporated under the Companies Act, 1956, hereinafter referred to as "the Lessor" (which expression shall unless it be repugnant to the contest or meaning thereof be deemed to mean and include its successors and permitted assigns) of the One Part.

AND

M/s. **ENNORE TANK TERMINALS PRIVATE LIMITED** a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 39 Kasturirangan Road Alwarpet, CHENNAI – 600 018, hereinafter referred to as "the Lessee" (which expression shall unless it be repugnant to the contest or meaning thereof be deemed to mean and include its successors and permitted assigns) of the Other Part.

AND WHEREAS, the Lessee has been selected as the Developer to ***design, engineer, finance, construct, operate, maintain, market and transfer a common user marine liquid Terminal on B-O-T basis at Ennore Port*** with all backup facilities and equipment as per the provisions under the Licence Agreement entered into between the parties and the Lessor has agreed to grant Licence to the Lessee to do so on the terms and conditions set forth in the Licence Agreement dated **10/11/2004** (the "Licence Agreement");

AND WHEREAS the Lessor and Lessee have agreed to execute this Lease in accordance with the terms of the said Licence Agreement for the development of the Terminal on the property more fully described in the Schedule hereunder and hereinafter referred to as "Schedule Property"

NOW THIS INDENTURE WITNESSETH as under:

For the purpose of this Lease, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Licence Agreement.

1 Lease of premises

In consideration of the premises aforesaid and of the rent reserved and of the covenants and agreements on the part of the Lessee to be observed and performed, the Lessor doth hereby lease unto the Lessee all that piece or parcel of land situate, lying and being at Ennore Port, more particularly described in the Schedule together with the right to use the foreshore land and the water front abutting thereto (the Schedule property, the right to use the foreshore land and water front are hereafter wherever the context so admits collectively referred to as "the Licensed Premises") together with all rights, easements and appurtenants thereto TO HAVE AND TO HOLD the Licensed Premises for a term of commencing from the __ the day of ____ to the - the day of -- subject to the Lessee paying during the said term unto the Lessor

a) Lease rent computed and escalated as per provisions of Clause 3 in this Lease Agreement equal to the amount of Rs /- (Rupees only).

b) One time, non-refundable payment of Lease premium equivalent to one years lease rent, payable on signing of Lease Agreement and equal to the amount of Rs /- (Rupees ----- only).

c) Security deposit held for the term of lease equivalent to one years lease rent, and renewable every five years on revision of Base Lease Rate equal to the amount of Rs /- (Rupees ----- only). The security deposit will be refundable on termination of this Lease Agreement after adjustment of any dues to the Licensor.

2 Base Lease Rate

The Base Lease Rate shall be Rs 30/- per square meter or part thereof per calendar year or part thereof and shall be valid for a period of 5 (five) years

The Base Lease Rate shall be revised at the end of 5 years for the following five year period, based on commercial principles as adopted by the Lessor

3 Revision of Rent

The Lease rent shall be computed as a product of the Lease rate as described in this section and the total land area leased as per this Lease Agreement

The Lease rate for the first year shall be equal to the Base Lease Rate. The Lease rate for the year immediately following revision of the Base Lease Rate, shall be equal to such revised Base Lease Rate. The Lease rate for all interim years between the years of revision of Base Lease Rate shall be calculated based on a 5% increase on the previous years rate and shall be computed as:

Lease rate for following year = Lease rate for previous year X 1.05

4 Time for payment of rent

The rent reserved hereunder shall be payable by the Lessee at monthly intervals in advance for the following month as per the provisions of Section 14 of the Licence Agreement. Any sum due under this Lease whether from the Lessee or sub-lessee or Licensee shall be recoverable as arrears of land revenue without prejudice to the rights and powers of the Lessor under this Lease, the Licence Agreement or any other law for the time being in force.

5 Use of leased premises

The Lessee shall utilise the leased premises, viz. the Schedule property and the foreshore land and the water front abutting thereto for the purposes of developing, constructing operating and maintaining the Terminal, for related and incidental activities and providing services to the users in accordance with the terms of the Licence Agreement.

6 Scope of Operations

The Lessee understands and agrees that this Lease of Schedule property is granted for the exclusive purpose to design, construct, own, operate, maintain, lease, assign, insure, finance, manage, market and develop the Terminal, and take action in accordance with the Licence Agreement with respect to all or any matters concerning the Terminal. Lessee shall not use the Schedule property or Licensed premises for any other purpose.

7 Right to sub-lease, subcontract etc.

The Lessee shall subject to the prior approval of the Lessor be entitled to assign, sub-lease, sublet, license or grant rights in the leased premises for all or any of the purposes set out herein granting the same or lawful powers herein contained and in accordance with the Licence Agreement, and such person shall be bound by the terms herein to the extent the same relate to such transfer, assignment etc. The Lessee shall in all such cases ensure that the assignment etc. shall not extend beyond the period herein contained and shall be subject to the terms hereof provided however the Lessee shall within 60 days of every assignment or assurance duly registered under the Indian Registration Act inform the Lessor of every such transfer, assignment sub lease, under-letting or license, as the case may be

8 Sub-Contracts

8.1 The Lessee may enter into one or more agreement or arrangement for assignment, sub-lease, sub-letting, licensing, construction, operation and maintenance contracts with such person and persons and upon such terms and conditions as the Lessee deems fit,

with the prior approval of the Lessor. PROVIDED HOWEVER all such agreements shall be subject to the terms hereof and the Licence Agreement and for a duration equal to or shorter than period herein and the Licence period provided therein. Without prejudice to the aforesaid the Lessee shall be obliged to perform obligations hereunder and shall be liable for the breach thereof whether committed by the Lessee or such other party under one or more of the contracts /arrangements aforesaid.

8.2 The Lessee and all persons acting under it shall conform to all parameters of environment, safety and technical sufficiency in discharging its rights and obligations.

8.3 It is further agreed that in the event of the Lessee granting any sub-lease(s), license or other rights to any person for the making erecting or filling of any wharf, dock, quay, stage, jetty, pier, erection, mooring or reclamation of the leased premises within the port area, and operating any facility constructed by the Lessee or its contractors, the Lessee shall be at liberty to charge and collect such fees and amounts from time to time and upon such term and conditions as the Lessee deems fit, but not exceeding the amounts due and payable by the Lessee to the Lessor under the terms of this Lease agreement.

9 Development of Leased Premises

Subject to the terms of the Licence Agreement, the Lessee shall be at liberty to construct, erect, renovate, repair, alter, pull down or otherwise deal with the leased premises and any structure or structures standing thereon or to be constructed hereafter and the works carried out therein and shall carry out any modifications thereto as it deems fit and shall keep the works and structures constructed or standing for the time being on the leased premises or any part or portion in good and tenantable repair and condition and the Lessee shall insure the same in such sum and against such risk as the Lessee deems fit.

10 Restrictions on Use of Land

The Lessee shall use the land leased only for the purposes of the Project. Any breach of this condition will be sufficient cause for the Lessor to terminate this lease.

11 Enjoyment of Leased Premises

The Lessor doth hereby covenant with the Lessee that upon the Lessee paying the rent hereby reserved and performing the covenants herein and the Licence Agreement, on the part of the Lessee to be observed and performed, the Lessee shall peaceably and quietly enjoy the leased premises for the said term hereby granted and its extensions as herein provided without any let, interruption or disturbance of from or by the Lessor or any person or persons lawfully or equitably claiming by, from or in trust for the Lessor.

12 Resumption of Leased Premises

The Lessor shall have the right to resume the leased property at any time before the expiry of the lease period if required by the Government in the national interest and/or by the port for its own use with six months notice on payment of compensation if any in accordance with the formulations as may be approved by the Government. Provided however that if the lease is terminated or cancelled for not complying with the conditions of the lease, no compensation whatsoever shall be payable by the Lessor

13 Creation of mortgage and other charge(s)

The Lessee and every sub-lessee, assignee, licensee or other person to whom any right to the leased premises or any part or portion thereof is granted by the Lessee, shall be entitled with prior permission of the Lessor, to create a mortgage or charge over the leased premises or any part or portion thereof or assign/ encumber the same, in accordance with the terms of the Licence Agreement, to secure any amounts due and payable by it to any banking company or a banking institution notified by the Central Government under section 51 of the Banking

Regulation Act, 1949 or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a co-operative bank as defined in clause (b) (ii) of section 2 of the Reserve Bank of India Act, 1934 or a finance company or public financial institution which may be notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any other Lender in India or abroad. Provided however all such mortgages, charges or encumbrances shall be subject to the rights of the Lessor under the Lease and the terms of the Licence Agreement and any modification or amendment thereof for the time being in force. The Lessor agrees that the Lender shall, subject to the approval of the Lessor and the terms of the Licence Agreement, be entitled to sell, convey or transfer the leasehold rights so charged.

14 Payment of other taxes, charges etc.

14.1 The Lessee shall pay all taxes, licence and other charges, dues, assessments, levies or outgoings payable in respect of the leased premises or the structures to be constructed thereon or in respect of the materials stored therein which may be levied by any Government, local authority or other persons.

14.2 The Lessee shall fully indemnify the Lessor of all liabilities in this regard.

15 Compliance of Laws

The Lessee shall not do or permit to be done on the leased premises or the structures to be put thereon which may be contrary to any law or legislation, central, state or local for the time being in force.

16 Insurance

The Lessee shall insure in accordance with the terms of the Licence Agreement, the Terminal, the facilities and infrastructure to be provided therein in such sum and against such risks as the same are capable of being insured with the name of the Lessee or such other person as the Lessee desires as the loss payee.

17 Power to Inspect

The Lessee shall permit the Lessor and its duly authorised representative to enter upon the leased premises and the works or structures for the time being constructed or standing thereon to view and inspect the same and if any defect is found and brought to the notice of the Lessee in writing to remedy or make good the defect within such reasonable time as may be specified by the Lessor.

18 Restriction of grant of right in the Marine Liquid Terminal to others

Subject to the terms of the Licence Agreement, the Lessor shall not during the subsistence of this Lease grant to any person any permission within the area of the Terminal to make, erect or fix any wharf, dock, quay, berth, stage, jetty, pier, place of exchange, erection of mooring or undertaking any reclamation of foreshore land without the previous permission in writing of the Lessee and every such grant shall be subject to payment by such private operator of such fees as may be determined by the Lessee in that behalf, except those already permitted before the execution of the Licence Agreement.

19 Termination

This Lease shall always be coterminous with the Licence Agreement and shall be automatically terminated in case of Termination/expiry of the Licence Agreement. Lessee agrees that any notice or communication for Termination of the Licence Agreement shall also be treated and/or deemed as notice for termination of this Lease and Lessee shall not insist on a separate notice for termination of this Lease and Lessee hereby waives all rights to a separate notice.

20 Disputes

If any dispute or difference of any kind whatsoever (a "Dispute") shall arise between the parties, the dispute resolution mechanism (Section 24) in the Licence Agreement shall apply.

21 Payment of Stamp Duty

Subject to what is stated herein, all costs, charges and expenses that are incidental to this Deed including the stamp duty and registration charges thereof shall be borne and paid by the Lessee alone.

22 Notice

Any notice or other communication to be given hereunder shall be in writing and shall be sufficiently given if delivered by registered mail or hand-delivered against written receipt or if transmitted and clearly received by facsimile transmission addressed as follows:

(a) In the case of Lessor to:
Chairman and Managing Director
Ennore Port Limited
15 Kasturirangan Road
Alwarpet
Chennai 600018
Tel: 044 24980051
Fax: 044 24662077

(b) In the case of Lessee to:
Ennore Tank Terminals Private Limited
19 Kasturirangan Road
Alwarpet,
Chennai– 600 018
Tel 044 24994880
Fax: 044 24661738

or sent to such other person by registered mail, courier, or hand-delivery to such other address in India as either Party may designate for itself by notice given in accordance with this clause. Any such notice shall be deemed to have been received on the date of delivery

23 Jurisdiction

The Courts at Chennai, Tamilnadu, India shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement

24 Acceptance

This Agreement is made in three original copies, each having the same contents and the parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For and on behalf of the Ennore Port Limited

By Chairman and Managing Director

WITNESS:

1.

2.

_____

For and on behalf of M/s. Ennore Tank Terminals Private Limited

By Mr.

WITNESS:

1.

2.

Schedule to Lease Agreement: DESCRIPTION OF SCHEDULE PROPERTY

Sr.No.	Total Area in Hect.	Survey no. of Land	Boundaries	Name of village

Appendix 9: Format for Maintenance Guarantee

THIS GUARANTEE dated, [___] day of [___], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [.] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

ENNORE TANK TERMINALS PRIVATE LIMITED a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 39 Kasturirangan Road Alwarpet, CHENNAI – 600 018, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of development of the marine liquid Terminal;

The Licensor and the Licensee have entered into the Agreement dated 10/11/2004 (hereinafter referred to as "the Agreement" as may be amended, modified and novated from time to time) pursuant to which the Licensee has designed, engineered, financed, operated, maintained the Project in accordance with the terms of the Agreement till this date and will continue operation and maintenance of the Terminal as per the provision of this Agreement till the Scheduled Date of Transfer.

Pursuant to Section 15.2.14 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper maintenance of the Project and other obligations under the Agreement as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Maintenance Guarantee ("Guarantee") and the Guarantor hereby irrevocably and unconditionally issues this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, without any demur or protest whatsoever and without referring to any other source, any sum or sums not exceeding in total the amount of Rs. ___ (Indian Rupees_____) estimated as per the provisions Section 15.2.14 of the Agreement, upon receipt of the Licensor demand in writing and written statement stating that the Licensee has failed to fulfil its obligations as per the Provisions of Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensor or any other person and irrespective of, or notwithstanding, the fact whether any dispute is pending, between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement [or for any other reason that the Licensor may state]. Any such demand made on the Guarantor shall be conclusive, absolute

and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

III. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement the Licensor may invoke the Guarantee, in part or in full, at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement.

IV. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

V. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VI. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VII. Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

VIII Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

IX. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder,

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper maintenance of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or in case of variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement,

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

X. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XI. This Guarantee shall remain in full force and effect upto a time of 1 (one) year after the Scheduled Date of Transfer **(Date to be Inserted on signing of Agreement)** as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee

XIa This Guarantee shall be valid for an initial period of [one year] and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof] until [1 (one) year after the Scheduled Date of Transfer].

XIb In the event this Guarantee is not renewed in the manner provided in sub-clause XIa above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix 10: Format for Payment Guarantee

THIS GUARANTEE dated, [___] day of [ ], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

ENNORE TANK TERMINALS PRIVATE LIMITED a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 39 Kasturirangan Road Alwarpet, CHENNAI – 600 018, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of development of the marine liquid Terminal;

The Licensor and the Licensee have entered into the Agreement dated 10/11/2004 (hereinafter referred to as "the Agreement" as may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to develop the Project in accordance with the terms of the Agreement.

Pursuant to Section 14.1 of the Agreement, the Licensee has undertaken to furnish to the Licensor a bank guarantee as security for

(i) timely Revenue Share payments the Licensor as per the provisions of the Agreement; and/or

(ii) timely payments of any other dues payable to the Licensor as per the provisions of the Agreement; and/or

(iii) timely payments of any claims by the Licensor on the Licensee; and/or

(iv) recovery by Licensor of any and all amounts payable and due to the Licensor from the Licensee as per the provisions of the Agreement; and/or

(v) as security for performance of any and all obligations under this Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Payment Guarantee ("Guarantee") and the Guarantor has agreed to issue hereby irrevocably and unconditionally issues this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, without an demur or protest whatsoever and without referring to any other source, any sum or sums, not exceeding in total the amount of Rs. (Indian Rupees) estimated as per the provisions of the Agreement, upon receipt of the Licensor's demand in writing and written statement stating any of the following:

a) that the Licensee has failed to pay the Revenue Share and other payments in accordance with Section 14 of the Agreement, and the amount which the Licensee has failed to pay and/or

b) that the Licensee has failed to meet its obligations under Section 15.2.13 and/or Section 19.3.6 IV of the Agreement and the amount spent by the Licensor as a consequence of (c) above;

c) that the Licensee has failed to pay/reimburse any payments/compensation/claims for damages, due to the Licensor in accordance with any of the Sections under this Agreement and the amount which the Licensee has failed to pay and/or;

d) the Licensor has issued a Transfer Information Notice

III. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

IV. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensors written demand as aforesaid, notwithstanding any applicable law or regulation.

V. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantors consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

VII. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

VIII. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely payments of Revenue Share and/or any other payments and/or any other claims due to the Licensor as per the provisions of the Agreement and/or performance of the Licensees obligations under Section 15.2.13 and/or Section 19.3.6 IV;

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

IX. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

X. This Guarantee shall remain in full force and effect during the Commercial Operations of the Project as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XI. This Guarantee shall be valid for an initial period of [six months] and shall be renewed 30 days prior to the expiry of any one six month term, for additional terms of [six months each or part thereof.

XII In the event this Guarantee is not renewed in the manner provided in sub-clause XI above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing, in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [__] day of [ ], 20--.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix 11: Minimum Annual Guaranteed Revenues

Period (starting from Date of Commercial Operation)	Rs Crore
For year 1 of Commercial Operations	2.5
For year 2 of Commercial Operations	2.6
For year 3 of Commercial Operations	2.8
For year 4 of Commercial Operations	2.9
For year 5 of Commercial Operations	3.0
For year 6 of Commercial Operations	3.2
For year 7 of Commercial Operations	3.4
For year 8 of Commercial Operations	3.5
For year 9 of Commercial Operations	3.7
For year 10 of Commercial Operations	3.9
For year 11 of Commercial Operations	4.1
For year 12 of Commercial Operations	4.3
For year 13 of Commercial Operations	4.5
For year 14 of Commercial Operations	4.7
For year 15 of Commercial Operations	4.9
For year 16 of Commercial Operations	5.2
For year 17 of Commercial Operations	5.5
For year 18 of Commercial Operations	5.7
For year 19 of Commercial Operations	6.0
For year 20 of Commercial Operations	6.3
For year 21 of Commercial Operations	6.6
For year 22 of Commercial Operations	7.0
For year 23 of Commercial Operations	7.3
For year 24 of Commercial Operations	7.7
For year 25 of Commercial Operations	8.1
For year 26 of Commercial Operations	8.5
For year 27 of Commercial Operations	8.9
For year 28 of Commercial Operations	9.3
For year 29 of Commercial Operations	9.8
For year 30 of Commercial Operations	10.2

The years of Commercial Operations indicated above will be limited by the Licence Period and the last year of Commercial Operation for calculation of the Minimum Annual Guaranteed Revenues shall always be the terminal year of the Licence Period

Director Copy (c)

LICENCE AGREEMENT

BETWEEN

ENNORE PORT LIMITED

AND

CHETTINAD INTERNATIONAL COAL TERMINAL PRIVATE LIMITED

TO DESIGN, ENGINEER, FINANCE, CONSTRUCT, OPERATE, MAINTAIN, MARKET AND TRANSFER A COMMON-USER COAL TERMINAL AT ENNORE PORT

Agreement No.: EPL/45-D/2002

Licence Agreement: Part I - Commercial Terms & Part II - Project Details.

September 2006

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भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

₹. 100

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

तमिलनाडु TAMILNADU

m/s. Chettinad International Coal Terminal Pvt. Ltd

A 271294

V. DHANALAKSHMI

STAMP VEN...

...MAD...

THIS LICENCE AGREEMENT (the "Agreement") is made and entered into this Fourteenth day of September 2006 BETWEEN:

ENNORE PORT LIMITED, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at No.23, Rajaji Salai, CHENNAI – 600 001, hereinafter referred to as the Licensor, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the first part,

AND

CHETTINAD INTERNATIONAL COAL TERMINAL PRIVATE LIMITED, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at Ram Seethai Hall, VIth Floor, 603 Anna Salai, Chennai 600 006, hereinafter referred to as the "Licensee", or the "Company" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the second part,

Each of the Licensor and the Licensee shall be referred to herein as a 'Party' and collectively as 'Parties'.

RECITALS:

WHEREAS, the Licensor is desirous of developing a coal terminal with all backup facilities and equipment.

ENNORE PORT LIMITED

Chettinad International Coal Terminal Pvt. Ltd. Chennai 600 006

AND WHEREAS, in October 2002, the Licensor issued an advertisement inviting Request for Qualification (RFQs) from interested parties to *design, engineer, finance, construct, operate, maintain, market and transfer a common user coal terminal on B-O-T basis at Ennore Port;*

AND WHEREAS, the consortium of South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd was qualified along with other bidders based on RFQ and clarifications submitted by the respective bidders and evaluated by the Licensor;

AND WHEREAS, in response to the Request for Proposal (RFP) document issued to the qualified bidders, the Bidders submitted bids;

AND WHEREAS, the Licensor, after evaluating all the bids received by it, has selected the bid submitted by the consortium of South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd as acceptable and decided to award the Licence to the Licensee vide Letter of Intent dated 09-07-2006 for award of Licence, and thereafter amended vide letter dated 07-08-2006, enclosed as Appendix 1;

AND WHEREAS, a Memorandum of Understanding (MoU) as appended in Appendix 3 has been signed by South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd, identifying obligations and responsibilities of each equity participant in the Company

AND WHEREAS, the consortium of South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd have incorporated the Licensee as a special purpose company to implement the Project;

AND WHEREAS, the Licensee was duly incorporated under the Companies Act, 1956, vide certificate of incorporation dated 10-03-2006 enclosed as Appendix 2

AND WHEREAS, the equity participation in the Licensee is in the proportion of 36%, 32% and 32% by South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd, respectively, as indicated in the RFP document;

AND WHEREAS the Licensee has made a non-refundable, irrecoverable payment of the Upfront Development Charge of Rupees Four Crores Only (Rs 40,000,000) to the Licensor within 30 Days of issue of Letter of Intent.

AND WHEREAS, the Licensee has agreed to *design, engineer, finance, construct, operate, maintain, market and transfer a common user coal terminal on B-O-T basis at Ennore Port* with all backup facilities and equipment as per the provisions under this Agreement and the Licensor has agreed to grant Licence to the Licensee to do so, on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties hereto as follows:

1. Definition of terms

1.1. Defined terms

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

1. "**Agreement**" means this licence agreement, as amended, supplemented or modified from time to time in accordance with terms and conditions hereof.

2. "**Appendix**" means any of the schedules, supplements or documents, appended to this Agreement.

3. "**Applicable Laws**" means any statute, law, regulation, ordinance, rule, judgement, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Authority having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter

4. "**Applicable Permits**" means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other transaction document.

5. "**Approved DPR**" means the detailed project report submitted by the Licensee to the Licensor and approved by the Independent Engineer for development of the Project, as per the provisions of Section 6

6. "**Bid Submission Date**" means 6/01/2006.

7. "**Business Day**" means any day on which banks in Chennai are open for business.

8. "**Cargo Handling Charges**" shall include storage, handling charges, wharfage, stevedoring and other cargo related charges levied/levuable on cargo owners/consignors/consignees.

9. "**Change in Law**" shall have the meaning assigned thereto in Section 17.1

10. "**Commercial Operations**" means commercial operations of the Project and Project Facilities to handle cargo on issue of Completion Certificate or on announcement of Date of Commercial Operations whichever is earlier.

11. "**Company Secretary**" means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980

12. "**Completion Certificate**" means the certificate to be issued by the Independent Engineer pursuant to Section 7.1 on completion of construction of the Terminal in accordance with the provisions of this Agreement.

13. "**Consortium**" means the consortium consisting of (i) South India Corporation Ltd, (ii) Portia Management Services Ltd, (iii) Navayuga Engineering Ltd formed pursuant to the Memorandum of Understanding dated 13/12/2002 and extended vide agreement dated 20/09/2005 and annexed hereto as Appendix 3 entered into by them, South India Corporation Ltd, Portia Management Services Ltd and Navayuga Engineering Ltd, for the purpose of bidding for the Project and to implement the Project through a Project Company to be formed and incorporated by them in India.

14. "**Consortium Member**" shall mean any member of Consortium.

15. "**Construction Guarantee**" shall have the meaning assigned thereto in Section 7.3

ENNORE PORT LIMITED

Chettinad Internal Coal Cool Terminal Chennai 600 008

16. "Construction Phase/Construction Period" shall have the meaning assigned thereto in Section 7.1.

17. "Date of Award of Licence" means the date of signing of this Agreement by both the Licensor and the Licensee.

18 "Date of Commercial Operation" means the date on which the Licensee is entitled to commence Commercial Operation of Project Facilities in accordance with the provisions of this Agreement including Section 7.11.

19. "Day" means the twenty four (24) hour period beginning and ending at 00.00 hours midnight Indian standard time.

20. "Debt Due" means the following sums expressed in Indian Rupees outstanding and payable to the Lenders under the Financing Documents.

A. The principal amount of the debt provided by the Lenders under the Financing Documents, which is outstanding on date of issue of Transfer Information Notice as per the payment schedule laid out in the Financing Documents approved by the Licensor and given in Appendix 6 but excluding:

a) any amounts of debt provided by the Lenders in respect of working capital for the Project;

b) any liabilities arising out of the security given for Financial Assistance

c) any overdue payments of loan principal and interest, accumulated prior to the Termination Notice

d) any consequential liabilities resulting from default under the Financing Documents, committed prior to the Termination Notice

21. "Defaulting Party" means a Party, which has committed a default of any of the terms and conditions of this Agreement and/or failed to discharge any of its obligations under this Agreement.

22. "Deputy Conservator/Harbour Master" means the Person designated as such for Ennore Port under the Indian Ports Act, 1908.

23. "Design and Drawings" means the conceptual and detailed design and drawings, back up technical information required for the Project and all calculations, samples, patterns, models, specifications and other technical information submitted by the Licensee from time to time and approved by the Independent Engineer in accordance with the provisions of this Agreement.

24. "Detailed Project Report/DPR" means the detailed project report submitted by the Licensee to the Licensor for development of the Project, as per the provisions of Section 6.

25. "Developer" means the Licensee.

26. "Direct Political Force Majeure" shall have the meaning assigned thereto in Section 18.2.2

27. "Ennore Port" shall mean the major port of Ennore notified under the Indian Ports Act, 1908.

28. "Encumbrance" means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, option, lien, charge, easement or encroachment, and any restriction on use, voting, transfer or receipt of income or, exercise of any other attribute of ownership;

29 "Environmental Clearance" means the one time in-principal initial clearance, (if any), for the Project, from the Ministry of Environment and Forests, under relevant Applicable Laws, being obtained prior to the execution of the Project. It is clarified that Environmental Clearance shall not include any general environmental clearance(s) required during the execution of the Project.

30. "Expert Committee" means the committee set up in accordance with Section 24.1.

31. "Expert" shall mean any person, body or organization with recognized specialist technical or professional expertise in respect of any field relevant for the purpose of this Agreement, to be appointed by the Parties by mutual consultation.

32. "Final Compensation Payable" means the compensation payable in accordance with Section 22.6.

33. "**Financial Assistance**" means all funded and non-funded financial assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project

34. "**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Documents and receipt of commitments for the equity required for the Project.

35. "**Financing Documents**" means the documents executed by the Licensee in respect of Financial Assistance to be provided by the Lenders to the Project as amended, supplemental or modified from time to time, but excluding any documents executed by the Licensee/any other Person in respect of Financial Assistance used to finance the equity shareholders capital of any Consortium Member and/or any other shareholder in the Licensee

36. "**First Required Part of the Licensed Premises**" means that part of the Licensed Premises which would be first handed over to the Licensee as per the schedule provided in Appendix 4.

37. "**Force Majeure Event**" shall have the meaning assigned thereto in Section 18.1 of this Agreement.

38. "**GoI**" means the Government of India

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

40. "**Government/Government Authority**" means the GoI, or any state government or any other statutory body or corporation, any department, authority, instrumentality agency, judicial body or tribunal of GoI, or any state government or any other statutory body or corporation having jurisdiction over the Licensee, the Licensed Premises, the Terminal, or any portion thereof

41. "**Gross Block**" means the gross book value as currently defined in AS-10 (or modifications or replacements to AS-10 as applicable from time to time) in accounting standards published by the Institute of Chartered Accountants of India.

42. "**Gross Revenues**" means the revenues calculated as provided for in Section 14.V of this Agreement.

43. "**Guarantee**" means any valid bank guarantee furnished by the Licensee in favour of the Licensor as per the provisions of this Agreement, enforceable and encashable in Chennai.

44. "**Handover Date**" means the date on which a letter is issued by the Licensor, or the date indicated in this letter indicating that the the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises are handed over to the Licensee .

45. "**Handover**" means the non-exclusive permission to enter upon, occupy and use the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises for the purpose of implementing the Project in accordance with this Agreement granted by the Licensor to the Licensee, and which shall be evidenced by a letter to be issued by the Licensor to the Licensee. It is clarified that Handover shall not create any proprietary interest in the First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises and the Licensor would reserve the right to enter upon and possess the said premises at any time

46. "**Independent Engineer**" means the expert appointed in pursuance of Section 4

ENNORE PORT LIMITED

Chennai International Coal Terminal Chennai 600 009

47. "**Indirect Indian Political Force Majeure**" shall have the meaning as given thereto in Section 18.2.2

48. "**Landing and Shipping Place Declaration**" means a declaration by the Collector of Customs declaring the Project Facilities as a Landing and Shipping Place.

49. "**Lead Consortium Member**" means M/s South India Corporation Ltd.

50. "**Lease Agreement**" means the land lease agreement proposed to be entered into between the Licensor and the Licensee in relation to the Licensed Premises immediately upon the occurrence of Financial Close.

51. "**Lender**" means any Banks, Indian/Foreign financial institutions, non-banking finance companies and multilateral lending institutions engages in the business of lending, providing debt to the Licensee in accordance with the normal and prudent business practices for the Project with whom the Licensee has executed Financing Documents "Lenders" shall have an analogous meaning.

52. "**Lenders' Rights of Substitution**" shall have the meaning assigned thereto in Section 19.3.2

53. "**Letter of Intent**" means the letter as provided in the Appendix 1;

54. "**Licence Period**" means the period as provided in the Section 2.2.

55. "**Licence**" means the Licence granted by the Licensor to the Licensee in accordance with the provisions of Section 2.1 of this Agreement for implementing the Project and for providing the Project Facilities in accordance with the provisions of this Agreement

56. "**Licensed Premises**" means the waterfront provided, and land to be leased by the Licensor to the Licensee and in which the Licensee is authorized to implement the Project in accordance with this Agreement and as per Appendix 10

57. "**Licensee Event of Default**" shall have the meaning assigned thereto in Section 19.1.

58. "**Licensor Event of Default**" shall have the meaning assigned thereto in Section 19.2.

59. "**Material Adverse Effect**" means a material adverse effect on (a) the ability of the Licensee and/or the Licensor to observe and perform in a timely manner its obligations under this Agreement or any Transaction Document, (b) the ability of the Licensee and/or the Licensor to avail the benefits of the Licence in accordance with the terms of this Agreement and (c) the legality, validity, binding nature or enforceability of this Agreement or any other transaction document.

60. "**Maintenance Guarantee**" shall have the meaning assigned thereto in Section 15.2.1.4.

61. "**Minimum Annual Guaranteed Revenue**" means the minimum annual guaranteed revenue payable to the Licensor as provided for in Appendix 9.

62. "**Month**" means the calendar month or part thereof as per the Gregorian calendar".

63. "**Nominated Developer**" means the Developer nominated by the Lenders in exercising the Lender's Right of Substitution as per Section 19.3.2.

64. "**Non-Defaulting Party**" means the Party, which has not committed a default of any of the terms and conditions of this Agreement.

65. "**Notice of Intent to Terminate**" shall have the meaning assigned thereto in Section 19.3.1

66. "**Non Political Force Majeure**" shall have the meaning assigned thereto in Section 18.2.1

67. "**Operations Phase**" means the period from the Date of Commercial Operation to the expiry/termination of the Licence Period.

68. "**Paid up Equity**" means the sum of par values of the ordinary shares subscribed and paid up in the authorized capital of the Licensee





69. **"Part-I"** means this Agreement containing commercial terms of the RFP.

70. **"Part-II"** means Volume II, Part II of the RFP containing Project details.

71. **"Party"** means either the Licensor or the Licensee as the context may require or admit and "Parties" means both Licensor and Licensee.

72. **"Payment Guarantee"** shall have the meaning assigned thereto in Section 14.1.

73. **"Person"** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or non-governmental authority or agency or any other legal entity or organisation

74. **"Port"** means Ennore Port including the Project.

75. **"Project"** means the designing, engineering, financing, constructing, operating, maintaining marketing and transfer of the Terminal by the Licensee, under the provisions of this Agreement, whether completed or at any stage of development and construction.

76. **"Project Company"** shall mean the Licensee.

77. **"Project Contracts"** means collectively this Agreement and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Licensee in connection with the Project and Project Facilities.

78. **"Project Facilities/Facilities"** means the facilities and services required as part of this Project and as set out in Part-II of this Agreement and any other additional facilities and services to be provided by the Licensee during the Licensee Period in accordance with this Agreement.

79. **"Project Schedule"** means the schedule of project implementation and time frame for activities, milestones and deadlines as set out in Approved DPR.

80. **"Regulatory Authority"** means any statutory or non-statutory body appointed for regulation of ports and has a mandate to regulate any aspects at Ennore Port.

81. **"Remedy Period"** means the period given to the defaulting Party for curing the default as per Section 19.3.3.

82. **"Request for Proposal (RFP)"** means the document that solicited proposals for this Project from eligible bidders.

83. **"Request for Qualification (RFQ)"** means the request for qualification submitted to the Licensor for this Project by the bidders in response to the request for qualification document issued by the Licensor.

84. **"Revenue Share"** means the share of Gross Revenues to be paid by the Licensee to the Licensor based on the value as quoted in the commercial proposal of the Licensee, provided in Appendix 6.

85. **"Scale of Rates"** means the scale of rates announced and/or approved from time to time by the Licensor and/or notified by any statutory or other relevant body including the statement of terms and conditions thereof

86. **"Scheduled Date of Transfer"** shall mean the date of expiry of the Licence Period or the date of early termination in accordance with this Agreement.

87. **"Significant Consortium Member"** means the entities, which hold not less than 25% equity stake in the Licensee.

88. **"Statutory Auditor"** means the statutory auditor of the Licensee as defined under the Companies Act 1956.

89. **"Subsequent Parts of the Licensed Premises"** means those parts of the Licensed Premises, which would be handed over to the Licensee after the handover of the First Required Part of the Licensed Premises as per the schedule provided in Appendix 4.





90. "**Terminal**" means the Licensed Premises, the berths, storage area, items of equipment, plant and any other facilities required to be created as per the provisions of Part-II of this Agreement.

91. "**Termination Notice**" shall have the meaning specified in Section 19.3.5

92. "**Transaction Documents**" means collectively the Project Contracts and the Financing Documents.

93. "**Transfer Assets**" shall have the meaning set forth in Section 20 of this Agreement.

94. "**Transfer Information Notice**" shall have the meaning as defined in Section 19.3.6

95. "**Transfer Date**" means the date immediately following the date of expiry or termination as the case may be, of the Licence in accordance with the terms of this Agreement

96. "**Vessel Related Charges**" means the charges levied on the vessels using the Port and the Project Facilities.

97. "**Year**" means the period of twelve months commencing from the Zero Date and every twelve month period thereafter, during the terms of this Agreement

98. "**Zero Date**" shall mean the starting date for the Licence Period, as per the provisions of Section 3.

1.2. Other references

In this agreement:

1. "CISF" means Central Industrial Security Force.
2. "m" means Metre, the unit of length
3. "sq m" means Square Metre, the unit of area
4. "km" means Kilo Metre, the unit of length
5. "T" means Metric Tonne, the unit of weight
6. "CD" means Chart Datum at Ennore Port

1.3. Interpretations

I. This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and / or oral representations and / or arrangements regarding the Project.

II. If however there is any aspect related to this Project, which is not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid document issued by the Licensor, as amended, and all correspondences between the Parties till the Date of Award of Licence.

III. This Agreement cannot be changed, modified or supplemented in any way except by an instrument in writing executed by the Parties

IV. Any amendment, addition or variation to this Agreement shall be valid and binding, only if the same is mutually agreed upon by the Parties, executed in writing, and signed by the Licensor and the Licensee.

V. If, for any reason whatsoever, any part or parts of this Agreement shall be declared void or invalid by any competent arbitral tribunal or court or becomes voidable that shall not effect the other parts which shall remain valid and enforceable.

VI. Save as otherwise expressly provided, any reference in this Agreement to:

A. The words importing the singular shall mean the plural and vice-versa.

B. "Article" "Section" and "Appendix" shall refer, respectively to Articles, Section and Appendices of this Agreement. The Appendices to this Agreement shall form part of this Agreement and will be in force and effect as if the same were expressly set out in the body of this Agreement. Part II of this Agreement shall form an integral part of this Agreement.

C. A time or time of Day shall be construed as a reference to Indian standard time.

D. The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

E. Interest to be calculated and payable to the Licensor under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement.

F. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary english meaning.

G. All payments due to the Licensor under this Agreement shall be payable by demand draft payable in Chennai and drawn on a scheduled commercial bank in favour of Licensor, unless otherwise approved of by the Licensor

H. All payments under this Agreement shall be governed by the Negotiable Instruments Act

I. Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer or any other Person shall be valid and effectual only if it is in writing and under the hands of the duly authorised representative of such Party or the Independent Engineer or Person as the case may be in this behalf and not otherwise

J. Unless otherwise stated any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates

2. The Licence

2.1. Grant of Licence

In consideration of the Licensee agreeing to pay the Revenue Share and other payments under this Agreement as set out in Section 7.4 and subject to the provisions of this Agreement, the





Licensor grants to the Licensee a licence (the "Licence") to implement the Project and provide Project Facilities at the costs, charges and expenses of the Licensee within the Licensed Premises during the Licence Period in accordance with this Agreement.

In consideration of the Licensee agreeing to perform and discharge its obligations as set forth in this Agreement, the Licensor hereby grants to the Licensee, the right to enter upon, occupy and use the Licensed Premises for the purpose of implementing the Project and to provide Project Facilities in accordance with this Agreement and as provided for in Section 2.7.

2.2. Licence Period

I. Unless, otherwise provided for, the Licence granted herein will be for a period of 30 Years (including the time taken for construction of the Terminal) from the Zero Date (the "Licence Period")

II. Unless otherwise provided for, this Agreement shall become effective on the Zero Date and shall, subject to termination under the provisions of this Agreement, be in force and effect until expiry of the Licence Period

III In the event of an early termination/determination of the Licence/ this Agreement by either Party in accordance with the provisions hereof, the Licence Period shall mean and be limited to the period commencing from the Zero Date and ending with the date of termination/determination/expiry of the Licence/this Agreement.

IV. On expiry/early termination/determination of the Licence Period, the Licence shall not be automatically renewed for a further period and the Project Facilities including the Terminal and Licensed Premises would revert back to the Licensor in accordance with the provisions of this Agreement.

V This Licence does not bar the Licensee from participating in any subsequent bids invited by the Licensor for operation of the Terminal after the Licence Period, subject to satisfactory performance by the Licensee during the Licence Period as appraised by the Licensor.

2.3. Covenants of the Licensor

The Licensor shall grant peaceful possession of the Licensed Premises as stated in Section 2.8.

2.4. Covenants of the Licensee

I. The Licensee shall make all payments to the Licensor as per the provisions of this Agreement.

II. The Licensee shall perform its obligations under this Agreement in compliance with all Applicable Laws and Good Industry Practice.

2.5. Acceptance of the Licence

I. The Licensee hereby accepts the Licence and subject to the provisions of this Agreement, the Licensee shall at its costs, charges, expenses and risk including but not limited to foreign exchange risk if any, implement the Project and provide Project Facilities, in accordance with the provisions of this Agreement.

II The Licensee hereby also agrees to transfer the Project Facilities to the Licensor as per the provisions of the Agreement.

2.6. Information about Licensed Premises

I. The information about the Licensed Premises as set out in Part II of this Agreement is provided by the Licensor in good faith and with due regard to the matters for which such information is required by the Licensee. The Licensor agrees to provide to the Licensee, upon a reasonable request, any further information relating to the Licensed Premises, which the

Licensor may now possess or may hereafter come to possess. Subject to this, the Licensor makes no representation and gives no warranty to the Licensee in respect of the condition of the Licensed Premises.

II. The Licensee agrees and confirms that it has thoroughly investigated and satisfied itself as to all general, local, marine, seawater, current, tidal, waves conditions at the Licensed Premises and the areas and waters adjacent thereto including but not limited to topography, ground surface, sub-surface, seismic, shore, harbour, marine, seawater, seabed, hydrographic and bathymetric conditions and any other conditions as particularly described in Part-II of this Agreement; the nature and quantity of surface, subsurface and marine materials or obstacles to be encountered, and equipment, machinery and materials required by the Licensee prior to and during the performance of the obligations hereunder.

III. If any defect, discrepancy, error or deficiency in the information supplied by the Licensor is noticed at any time during the Licence Period, no claim on this account will be entertained by the Licensee including claim for extension of time for completing construction of the Terminal, nor the Licensor shall in any way be responsible for any loss or damage, if any, caused to the Licensee as a result thereof.

IV Notwithstanding anything contained herein, it is expressly clarified that:

a) The Licensee is responsible for checking and verifying the data, reports and other information contained in Part II of this Agreement.

b) The said information is provided only for the convenience of the Licensee, the verification and interpretation of which is the sole responsibility of the Licensee

c) The Licensor shall have no liability for adequacy, accuracy or completeness of such data and information.

d) The Licensee shall protect, indemnify and hold Licensor harmless for and against any and all losses arising directly or indirectly from or incurred by reason of the use of such data and information by any Person.

V. Licensee hereby waives any claims it may otherwise have against the Licensor in this regard or against any Person that has prepared, compiled or provided any such data and information.

2.7. Acceptance of the Licensed Premises

I. The Licensor shall Handover the Licensed Premises to the Licensee as per the timeframe and description as stated in Appendix 4.

II. The Licensee shall accept possession of the Licensed Premises on 'as is where is' basis.

III It is expressly clarified that execution of a land licence agreement shall not be necessary for Handover. It is the Parties intention that the Lease Agreement shall be executed immediately upon Financial Close being achieved whereupon the land licence granted to the Licensee pursuant to the Handover shall terminate.

IV In the case of failure of the Licensee to achieve Financial Close by 13/09/2007 or failure of the Licensee to execute the Lease Agreement by 12/10/2007, the permission granted to the Licensee to enter upon, occupy and use First Required Part of the Licensed Premises, and/or any Subsequent Parts of the Licensed Premises pursuant to Handover shall stand forthwith revoked. Provided where such delay after Financial Closure, is attributable to the Licensor, the land licence pursuant to Handover shall remain in force until the Licensor indicates readiness to execute the land Lease Agreement by written communication to the Licensee.

V The Licensee shall, at its costs, charges and expenses, be entitled to make such development and improvements in the Licensed Premises as may be necessary or appropriate for implementing the Project provided always it is hereby mutually agreed as follows

a) Pending execution of the Lease Agreement, the Licensee shall not at any time put up any construction over the Licensed Premises subsequent to Handover, without the prior written permission of the Licensor

b) If the Licensee puts up a construction without the written permission of the Licensor or before the execution of the Lease Agreement, the construction so put up shall become the property of the Licensor

c) If the Licensor does not require the construction so put by the Licensee without the permission of the Licensor or before the execution of the Lease Agreement, the Licensee shall remove the construction at the Licensee's cost and restore the Licensed Premises in as good a condition it was at the time the Licensee was put in possession, within a reasonable time, during the currency of the Licence, failing which, the Licensor shall have the right to remove the construction at the cost and expense of the Licensee

d) In the event of resumption by the Licensor of any of the Licensed Premises consequent to the early termination of the Licence or any other reason, subsequent to Handover, the Licensor shall not be bound to pay any compensation whatsoever for repossession of the Licensed Premises including consequential possession of any development/construction on the Licensed Premises.

2.8. Peaceful Possession

Except as otherwise provided in this Agreement, the Licensor warrants that the Licensor shall not, disturb the peaceful possession and enjoyment of the Licensed Premises by the Licensee during the Licence Period, subject to complying with the terms and conditions of this Agreement. In the event the Licensee is obstructed by any person claiming any right, title or interest in or over the Licensed Premises or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any person claiming to have charge on the Licensed Premises or any part thereof, the Licensor shall, if called upon by the Licensee, at Licensee's cost, defend such claims and proceedings unless such attachment, distraint, appointment of receiver or liquidator has not occurred due to any default by the Licensee under any contract or law applicable to the Licensee, and is not an outcome of the Licensor's rights provided for herein

2.9. Use of Licensed Premises

The Licensee shall not use the Licensed Premises for any purpose other than for the purposes of the Project and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Licensor in writing.

2.10. Representations and warranties

The Licensee hereby represents and warrants to the Licensor that as of the date hereof:

a) it has the power and authority and has taken all actions necessary to validly execute and deliver this Agreement;

b) its obligations under this Agreement will be legally valid and binding and enforceable against it;

c) it is subject to the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement;

d) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required under the terms of any covenant, agreement, 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 and does not result in a violation of any Applicable Law;

e) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any relevant authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;

f) it has complied with Applicable Law 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 has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

g) it is a private company limited by shares incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation;

h) it is not engaged in any business other than the business of operating and managing ports and other ancillary activities; and

i) the shareholding pattern of the Licensee is as follows:

Parties	Percentage of issued and paid up share capital of the Company
South India Corporation Ltd	36%
Portia Management Services Ltd	32%
Navayuga Engineering Ltd	32%

j) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement; and

k) no sums, in cash or kind, have been paid to, or accepted by, any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise for entering into this Agreement.

3. Zero Date for Licence Period

3. The Licence Period shall commence from the Zero Date which shall be the later of:

a) the date of issue of the letter from the Licensor to the Licensee communicating receipt of Environmental Clearance;

b) the Handover Date of the First Required Part of the Licensed Premises as identified in Appendix 4.

II. In case of any delay in Handover of the Subsequent Parts of the Licensed Premises as-per the schedule described in Appendix 4, the construction milestones referred to in the Project Schedule will be deferred by an equivalent period and the Licensee shall get day-for-day extension in the Licence Period for such equivalent period.

III. If the delay continues beyond 180 days in Handover of the Subsequent Parts of the Licensed Premises as per the schedule described in Appendix 4, the Licensee shall be entitled to terminate the Agreement as per the provisions of the Licensor Event of Default.

4. Independent Engineer

4.1. Duties of Independent Engineer

An Independent Engineer shall be appointed to carry out and perform the duties, services and responsibilities as described below and elsewhere in this Agreement:

I. Approval of Design and Drawings and report to the Licensor, any objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

II. Approval of DPR and report to the Licensor, objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

III. Ensuring that the provisions of the Design and Drawings and the Approved DPR do not adversely obstruct any development plans of the Licensor, as and if provided by the Licensor at the time of approval of the Design and Drawings and the Approved DPR.

IV. Upon request of the Licensee on completion of construction of the Terminal, carry out inspections to ensure that the Terminal has been constructed as per the provisions of this Agreement and the Approved DPR, and issue the Completion Certificate to the Licensee.

4.2. Appointment of and expenses on Independent Engineer

I. The Licensor shall within 30 Days from the date hereof or from the time both parties decide to appoint an Independent Engineer submit to the Licensee a panel consisting of at least three reputed organisations having necessary expertise for appointment as the Independent Engineer, to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Section 4.1 and elsewhere in this Agreement.

II. If the panel submitted by the Licensor is acceptable to the Licensee, the Licensee shall promptly and without delay inform the Licensor in writing the approval of the panel.

III. The Licensor shall within 30 Days from the date of receipt of such approval, appoint the Independent Engineer from such panel, and communicate the same to the Licensee.

IV. In case of the Licensees disapproval of the panel, such disapproval shall be communicated promptly and not later than 10 (ten) Days from the submission of the panel by the Licensor in writing to the Licensor, indicating approved members in the panel, if any. The Licensor shall then submit another panel of three such organisations within 10 (ten) Days, which may include such approved members.

V. In case the Licensee is unable to approve either panels for any reason whatsoever or delays giving notice of approval or disapproval, then in such case, without prejudice to any other remedies and rights that the Licensor may have under this Agreement, the Licensor shall appoint the Independent Engineer from such panel and communicate the same to the Licensee.

VI. The costs and expenses of the Independent Engineer shall be paid by the Licensor.

VII. The Licensor may terminate the appointment of the Independent Engineer and appoint another Independent Engineer in its place in accordance with the provisions of this section or as may be mutually agreed:

a) If the Licensor has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner.

b) If the Independent Engineer resigns or notifies its intent not to continue as the Independent Engineer.

VIII. In case of delays beyond 30 Days in reappointment of the Independent Engineer subsequent to termination of appointment as per Section 4.2 VII, the construction milestones referred to in

the Project Schedule will be deferred by an equivalent period and the Licensee shall get day for-day extension in the License Period for such equivalent period

IX. Initial term of the Independent Engineer will be 30 (thirty) Months from appointment, and extendable by the Licensor if the Licensor deems it necessary

5. Designs & Drawings

5.1. Preparation of Design and Drawings

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the Design and Drawings for the Terminal. The Licensee shall ensure preparation of Design and Drawings through established and professionally qualified personnel, either in-house, if available or through outside agencies keeping in view the various parameters and standards as set out in Part – II of this Agreement.

5.2. Review and approval of Design and Drawings

I The Licensee shall submit the Design and Drawings in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor.

II The Independent Engineer will review the Design and Drawings submitted by the Licensee, inter-alia taking into account the comments and views of the Licensor and Good Industry Practice, and communicate its approval to Licensee within 30 Days from the date of the receipt of such Design and Drawings and submit a copy to the Licensor.

III. In the event that the Independent Engineer has any objection to the Designs and Drawings it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Independent Engineer and the Licensor and/ or re-submit the Design and Drawings as the case may be, after incorporating the changes, modifications or corrections suggested.

IV If the Independent Engineer does not object to the Design and Drawings submitted to it by the Licensee within Thirty Days of submission, the Independent Engineer shall be deemed to have approved such Design and Drawings and the Licensee shall be entitled to proceed with the Project accordingly.

V. The failure on the part of the Independent Engineer or the Licensor to object to the Design and Drawings shall not be construed as a waiver by the Licensor of any of its rights under this Agreement nor it shall in any way relieve and/or absolve the Licensee of its obligations and/or liabilities under this Agreement.

VI. The Licensee shall not be entitled to any extension of time for completing construction or to any other relief because of delay caused due to providing any clarification or in resubmitting the Design and Drawings

VII. The Licensee shall not change any Design and Drawings approved or deemed to be approved by the Independent Engineer under this Agreement, without the prior written consent of the Independent Engineer and the Licensor. Provided that the Licensee may, for more efficient functioning of the Project Facilities and Services propose to the Independent Engineer and the Licensor for their approval changes to the approved Designs and Drawings and specifications of any equipment consistent with all design standards applicable to the Project and the Applicable Laws. Such changes shall be proposed on a no obligation basis and would be implementable only on prior written approval of the Licensor, and the consequent cost and time impact in respect of the Project shall always be to the account of the Licensee.

VIII. Notwithstanding the express or deemed approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the

Design and Drawings relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement.

IX Any review of the Design and Drawings conducted by the Licensor/Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review, the Licensor/Independent Engineer does not accept any responsibility for the same.

X The Licensee shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability, efficiency, safety and reliability of the Project or any part thereof agrees to indemnify the Licensor as provided for in Section 16.7.

6. Approved DPR

6.1. Preparation of DPR

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the DPR of the Project within six Months from the **Date of Award of Licence**. The DPR shall contain a master plan for the Terminal, traffic projections, tariff projections, conceptual design and layout, detailed cost estimates, yearwise capital expenditure schedule, land requirement and utilisation plan, list of all assets, sources of finance, financing mix, management structure, personnel required, environmental impact mitigation plans, maintenance schedule and plan, equipment replacement plan and any other details specified by the Licensor or the Independent Engineer and/or as required under this Agreement. The Licensee shall ensure preparation of DPR through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as set out in Part – II of this Agreement.

6.2. Review and approval of DPR

I. The Licensee shall submit the DPR in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor.

II The Independent Engineer will inter-alia taking into account the comments and views of the Licensor and Good Industry Practice, review the DPR submitted by the Licensee, and communicate its approval to Licensee within Thirty Days from the date of the receipt of such DPR and submit a copy to the Licensor.

III. In the event that the Independent Engineer has any objection to the DPR it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarifications to the Independent Engineer and the Licensor and/ or re-submit the DPR as the case may be, after incorporating the changes, modifications or corrections suggested.

IV. If the Independent Engineer does not object to the DPR submitted to it by the Licensee within thirty Days of submission, the Independent Engineer shall be deemed to have approved such DPR and the Licensee shall be entitled to proceed with the Project accordingly.

V. The Licensee shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR.

VI. The Licensee shall not change any DPR approved or deemed to be approved by the Independent Engineer under this Agreement, except as provided in Section 7.7.





VI. Notwithstanding the express or deemed approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the DPR relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement;

VII. Any review of the DPR conducted by the Licensor/Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review, the Licensor/Independent Engineer does not accept any responsibility for the same

IX. The Licensee shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the commercial aspects or the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the commercial and technical feasibilities, operational capability, efficiency, safety and reliability of the Project or any part thereof and agrees to indemnify the Licensor as provided for in Section 16.7.

7. Construction Phase

7.1. Construction Period

The Licensee shall promptly commence and complete the construction of the Terminal in accordance with the Project Schedule and obtain from the Independent Engineer, a certificate as to completion of construction of the Terminal in accordance with the provisions of this Agreement (the "**Completion Certificate**") not later than 30 months from the Zero Date (the "**Construction Period**") or such extended period as approved by the Licensor.

7.2. Obligations of Licensee and Licensor

7.2.1. Obligations of Licensee

The Licensee agrees and undertakes at its cost, charges and expenses to:

I complete design, construction, erection, completion and development of the Terminal within 30 months from the Zero Date, subject to the provisions of Section 3 and in accordance with the Approved DPR and Design & Drawings;

~~II undertake, at its own cost, charges and expenses, the work such as realignment of roads, electric poles, lighting towers, buildings or any other structures within the Licensed Area for which any law required in connection with the Project;~~

III keep valid the Construction Guarantee as per Section 7.3;

IV obtain and maintain all Applicable Permits required for the Project except those expressly falling within the scope of Licensor's obligations;

V. entrust responsibility for project management and construction to professionally competent Persons;

VI. achieve Financial Close and make available in a timely manner all necessary financial and other resources required for implementation of the Project and provision of Project Facilities;

VII. comply with Applicable Laws including any obligations or duties mandated by any Applicable Permits including the Environment Clearance and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

VIII provide to the representative(s) of the Licensor and/or the Independent Engineer, at reasonable times and upon prior intimation, access to the Project site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that

failure on the part of the Licensor/Independent Engineer to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor/Independent Engineer nor shall the same be deemed to be waiver of any of the rights of the Licensor/Independent Engineer under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

IX. provide to the Licensor and/or the Independent Engineer periodic status reports relating to the say its features and obligations at the time and in the manner to be set out in the Approved DPR.

X promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure completion of construction of the Terminal in all respects in accordance with the provisions of this Agreement, without reference to the Licensor for making changes in the commercial or other terms of this Agreement.

XI. within 90 days of the issue of Completion Certificate, furnish to the Licensor 3 copies of the 'as built' Designs and Drawings duly vetted by the Independent Engineer reflecting the Project as actually designed, engineered and constructed, including without limitation an 'as built' survey illustrating the layout of the Project and setback lines, if any, of the building and structures forming part of the Project Facilities. The Licensee shall also provide the Licensor the total cost of construction of the Project with breakup of the cost of each asset constructed/purchased duly certified by Statutory Auditors and also provide all technical information including technical manuals.

7.2.2. Licensor Obligations

The Licensor agrees and undertakes to:

I. on a best endeavours basis, assist the Licensee in obtaining Applicable Permits required by the Licensee subject to the Licensee fulfilling the required conditions for grant of such Applicable Permits including the costs of such Applicable Permits;

I a shift and relocate all utilities in the Licensed Premises and provide utility free land at the time of Handover of Licensed Premises

I b arrange to raise the ground level of stockyard area in the Licensed Premises upto a maximum level of +2.5m CD, without compaction or soil treatment of the placed material

II. grant approvals/consents sought by the Licensee as required under this Agreement as lies within its power, with reasonable promptness, subject to the Licensee fulfilling all conditions for obtaining such approvals/consents.

III cause the Licensed Premises to be inspected by the Independent Engineer, upon information by the Licensee that the construction of the Terminal is complete. The Independent Engineer shall, upon satisfying itself as a result of such inspection that all construction has been completed in accordance with the approved DPR and Design and Drawings, issue the Completion Certificate.

7.3. Construction Guarantee

I. The Licensee shall obtain and furnish to the Licensor a valid bank guarantee of Rs. 6,00,00,000/- (Indian Rupees Six Crore only) (the "**Construction Guarantee**") in favour of the Licensor enforceable and encashable at Chennai as per format in Appendix 5 from a scheduled bank acceptable to the Licensor no later than three (3) Business Days after the Zero Date and submit the same to the Licensor. The Construction Guarantee shall be valid from Zero Date until issue of Completion Certificate.

II. Without prejudice to the obligation of the Licensee to complete the construction of the Terminal as contained in Section 7.1 hereto, in case of delays in completion of construction as per the provisions of Section 7.1 & 7.2, the Licensee agrees to compensate the Licensor at the rate of Rs. 3,30,000/- (Indian Rupees Three Lakh and Thirty Thousand only) per Day for every Day of delay, or part thereof, payable on monthly basis, up to a period of 180 Days. The Licensor shall be entitled to recover such compensation through partial encashments of the Construction Guarantee.

III Without prejudice to the obligation of the Licensee to complete the construction of the Terminal as contained in Section 7.1 hereto, in case the delay in completion of construction, as per the provisions of Section 7.2, is more than 180 Days, the Licensor shall be entitled to encash the balance Construction Guarantee and terminate this Agreement, without prejudice to any other remedies and rights that the Licensor may have under this Agreement.

IV The Parties agree that amounts described in Section 7.3 I, II and III are a fair and reasonable estimate of the loss and damage likely to be suffered by the affected Licensor. The Parties expressly agree that such sums are not to be construed as penalty clause.

V The decision of the Licensor as to any breach/delay having been committed, liability accrued, or loss or damage caused or suffered shall be conclusive, absolute and binding on the Licensee. The Licensee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Licensor under this Agreement is required to be provided in connection with any demand made by the Licensor to recover such compensation through encashment of the Construction Guarantee under this Agreement and that no document or any notice shall be required other than the Licensors written demand as aforesaid.

7.4. Right to appoint contractors

The Licensee may engage any Person possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project Facilities provided that such engagement or appointment shall not relieve the Licensee of any of its obligations hereunder and the Licensee shall at all times be solely responsible for non performance or for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement.

7.5. Equipment and materials

The Licensee is free to plan all constructional activities and back-up facilities connected with the proposed Terminal within the Licensed Premises. The Licensee shall provide or cause to be provided at its own cost, all necessary equipment, raw materials and other items that may be required for the construction of either temporary or permanent nature.

7.6. Project Schedule

The Licensee agrees and undertakes to perform its obligations under this Agreement in accordance with the Project Schedule set out in the Approved DPR.

7.7. Changes in Approved DPR and Design & Drawings

I. All construction shall be strictly in accordance with the Approved DPR and Design & Drawings. The Licensee shall intimate the Licensor in writing in case the Licensee proposes any material changes or deviations in the Approved DPR and Design & Drawings during any stages of development and construction or operation of the Project in the nature of:

A changes in the physical structure that alters the basic design of the structure

A. Variation in proposed quality standards/ specifications of assets

C. changes in the approved land use plan

D. changes in the schedule of construction and milestone dates

II. Any change proposed by the Licensee in the Approved DPR and Design & Drawings shall be subject to the approval of the Licensor.

III. Consequent adjustment to the milestones if requested by the Licensee shall be subject to the prior approval of the Licensor. The Licensee shall implement the approved changes in conformity with this Agreement.

IV. The Licensor agrees that the Licensee is not obliged to accept any changes, if suggested by the Independent Engineer/Licensor, upon approval of the DPR.

7.8. Financial obligations of the Licensee

I. The Licensee shall implement the Project, construct the Terminal and provide Project facilities entirely at its own costs, charges and expenses. Any increase in such costs, due to any reason whatsoever, including but not limited to cost overrun and/ or loss due to delayed construction and/or changes cost increases due to changes suggested by Independent Engineer and or Licensor, shall remain the sole responsibility of the Licensee. The Licensee agrees that this shall under no circumstances form the basis for any change or renegotiation in the commercial and or other terms of this Agreement with the Licensor.

II. No extension of time for construction and commissioning of the Terminal due to delay in financing of the Project will be permitted by the Licensor except as approved by the Licensor and/ or if such delay is attributable to the Licensor's default.

7.9. No release

I. The Licensee agrees, declares and confirms that failure on the part of the Licensor to inspect any work

a) shall not amount to consent or approval by the Licensor nor the same shall be deemed to be waiver of any rights of the Licensor under this Agreement; and

b) shall not release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

II. The Licensor agrees that it shall not unreasonably delay or withhold any inspection requested by the Licensee for obtaining any approval and/ or consent of the Licensor required to be obtained under any provision of this Agreement.

8. Supply of power, water and other utilities

The Licensee shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the Project. The Licensee shall be liable for all payments to the concerned parties for power, water and other utilities required for the Project during Construction Phase and Operation Phase.

9. Provision of land

The Licensee shall provide to the Licensor, details of the total land requirement for the Project in the Approved DPR. The location of such land requirement would be earmarked by the Licensor and communicated to the Licensee.

II. The Licensor shall provide land as specified in Section 9.1, conditional upon the Licensee entering into a Lease Agreement for such land upon Financial Close and prior to commencement of Commercial Operations

III. In the event that the Licensee fails to enter into a Lease Agreement with the Licensor for the land as per provisions of Section 9.1 and II, then,

a) the Licensor shall have the discretion to dispose of such land in its possession, in respect of which, the Licensee has failed to enter into a Lease Agreement with the Licensor; and

b) the Licensee shall also forfeit its right to seek the lease of land as specified in Section 9.1 and/or any additional land beyond requirements

IV. Notwithstanding the above, for avoidance of doubt, it may be clarified that Licensor shall, in its sole discretion dispose of/allot for other purposes without reference to the Licensee

a) land in respect of which the Licensee has failed to enter into a Lease Agreement with the Licensor; and/or

b) any other lands not included in Section 9.1 above

V. Notwithstanding anything contained in this Agreement, for avoidance of doubt, it is clarified that the Licensor shall have the right to allot land for storage of any cargoes, to any user, without reference to the Licensee

VI For avoidance of doubt it is also clarified that disposal/allotment of land as per Section 9.IV and V above shall not be construed or deemed to be breach of the exclusivity provided to the Licensee as per provisions of Section 15.1.3 of this Agreement

9.1. Provision of additional land

I. The reasonability of the request by the Licensee for lease of lands in excess of land specified in the Approved DPR shall be assessed by the Licensor based on, *inter alia*, the track record of the Licensee in meeting the development milestones in the Approved DPR, extent of development and commercial exploitation of land in possession of Licensee in accordance with terms of Lease Agreement, availability of land and the land use plan as modified from time to time by the Licensor.

II. Lease of further lands will be granted at the sole option of the Licensor, upon the Licensee's timely achievement of the development milestones specified in the Approved DPR, subject to the availability of land, extent of development and commercial exploitation of land in possession of Licensee and the land use plan as modified from time to time by the Licensor.

9.2. Non provision of land

I. For avoidance of doubt it is hereby clarified that no compensation whatsoever will be payable to the Licensee if as a consequence of the actions of the Licensor as per Section 9.IV, land requirements of the Licensee as specified in Section 9.1 and II are not provided by the Licensor. Furthermore, it is hereby clarified that no compensation whatsoever shall be payable by the Licensor to the Licensee in the event land requirements of the Licensee pursuant to Section 9.1 are not provided by the Licensor for any reason.

10. Provision of transport infrastructure

10.1. Railway infrastructure

10.1.1 Upto boundary limits

I. The Licensor shall provide or cause to provide a rail link upto the boundary limits of the Licensed Premises and connecting to the nearest main line not later than 36 months from the Zero Date.

II. In case of delay upto 180 days in provision of the rail link upto boundary limits, the Licensor shall grant day-for-day extension in the Licence period. The delay of more than 180 days can be treated as a Licensor Event of Default.

10.1.2. Within boundary limits

I. The Licensee shall not be responsible for provisioning of any railway infrastructure within the boundary limits of the Licensed Premises.

II. The Licensee is permitted to construct, operate and maintain railway sidings within the boundary limits of the Licensed Premises and subject to Applicable Law, is hereby allowed full commercial freedom in levying and collecting user charges for the same

III. The Licensee shall, at its cost, be liable to make arrangements with Indian Railways or any other agency for provision of rail transport services

IV. The Licensee shall be responsible for relevant permits and approvals for construction, operations and maintenance of rail facilities within boundary limits.

10.2. Road infrastructure

10.2.1. Upto boundary limits

I. The Licensor shall provide or cause to provide a road access upto the boundary limits of the Licensed Premises on or before the Date of Commercial Operations.

II. In case of delay upto 180 days in provision of the road access upto boundary limits, the Licensor shall grant day-for-day extension in the Licence period. The delay of more than 180 days can be treated as a Licensor Event of Default.

10.2.2. Within Boundary Limits

I. The Licensor shall not be responsible for provisioning of any road infrastructure within the boundary limits of the Licensed Premises.

II. The Licensee is permitted to construct, operate and maintain road infrastructure within the boundary limits of the Licensed Premises and is allowed to charge tariffs, fees or levies for the same, as per applicable regulations

III. The Licensee shall be responsible for relevant permits and approvals for construction, operations and maintenance of road facilities within boundary limits.

11. Operation and maintenance

11.1. Date of Commercial Operations

I During the Construction Phase, the Licensee may inform the Licensor that the Project Facilities are ready for a Landing and Shipping Place Declaration under Applicable Law.

II. On receipt of such communication and the Completion Certificate, the Licensor shall be entitled to verify that the Licensee has constructed the Terminal and developed the Project Facilities in accordance with this Agreement.

III. The Licensor shall, if satisfied that the Licensee has constructed the Facilities in accordance with this Agreement, submit an application, within one week of the date of completion of the inspection, to the Customs Department for the Landing and Shipping Place Declaration as per Applicable Law at the costs and expenses of the Licensee.

IV. The Licensor shall obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and services as ready for operation at the costs and expenses of the Licensee.

V. The Licensee shall promptly declare the Date of Commercial Operation and commence operations after complying with all requisite statutory obligations and any other obligations under this Agreement;

VI. Commercial handling of cargo shall not be permitted at any time prior to the declared Date of Commercial Operations and any such handling will be treated as a Licensee Event of Default.

11.2. Obligations of the Licensee

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

11.2.1. Berth and Terminal operations

The Licensee shall:

I. promptly commence operations on the Date of Commercial Operation;

II. make efforts to maximise cargo handled so as to achieve optimal utilisation of the Project Facilities;

III. make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project;

IV. obtain approval of the regulatory body, as applicable, for the tariffs, charges and levies, where required under Applicable Laws;

V. submit to the Licensor a copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

VI. in case of changes in tariffs, levies or charges, submit to the Licensor an updated copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

VII. except as provided for herein, manage and operate the Project Facilities on a common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;

VIII. ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and the revenue earned therefrom;

IX. comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;

X. fully observe and comply with the Scale of Rates and the statement of terms and conditions thereof as amended from time to time in respect of tariffs charges and levies charged by the Licensee;

XI fully observe and comply with all the Provisions of the Indian Ports Act 1908 as amended from time to time, bye-laws, rules and regulations made there under, any administrative or other directions and guidelines given under the said Act, guidelines on Land and Waterfront Management issued by any Government Authority from time to time, the Customs Act and all other statutory enactment in relation to the operations at the Project Facilities.

XII upon prior information by the Licensee, provide the authorised representatives of the Licensee access to the Project Facilities for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement.

11.2.2. Repairs and maintenance

I. The Licensee shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities or part thereof, which may be lost, damaged, or destroyed.

II. The Licensee shall abide by the operations and maintenance plan ("Operations and Maintenance Plan") as outlined in the Approved DPR;

III. The Licensee shall maintain the Project Facilities in accordance with Good Industry Practices with the objective of providing adequate service standards and ensuring that the Project Facilities to be transferred to the Licensor on expiry of the Licence Period are in good condition, though normal wear and tear is excepted;

IV. The Licensee shall at its own costs maintain design dredged depth of -15.0 m CD for a width of 50 m alongside the berth, and obtain appropriate certifications from the Deputy Conservator from time to time;

V. The Licensee shall at its own costs, dump dredged material only at the sites designated by the Deputy Conservator, which shall be designated such that the land based site is about 1.5 Km from the shore point of the berth and the sea based site is at a distance of about 5 Km from the port area.

11.2.3. Removal/Replacement of assets

I. The Licensee shall at its cost plan for replacement of the equipment well ahead of the due dates therefor and replace the equipment as per the equipment replacement plan ("Equipment Replacement Plan") set out in the Approved DPR.

II. The Licensee shall not, without the prior approval of the Licensor, remove or replace any assets comprised in the Project Facilities.

11.2.4. Accounts, auditing and reports

I Within five Days following the end of each Month, the Licensee shall provide to the Licensor monthly reports on cargo traffic, vessel traffic, tariffs charged, turnaround time and any other information relating to operations, which the Licensor may reasonably require. The Licensee shall also produce necessary books of accounts, vouchers, and any other information to the Licensor or its nominees or representatives, required for assessing/evaluating the Revenue Share.

II. On or before the fifth Day of the Month, the Licensee shall provide for the preceding Month a statement giving summarized ship/vessel/user-wise information on:

A. tonnage of cargo handled by category,

B. tariffs charged and the amount of rates received and all revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

C. Statement of all Gross Revenues accrued during the Month and the corresponding Revenue Share payment due to the Licensor, duly certified by the Licensee's Statutory Auditor.

III. The Licensee shall during the subsistence of this Agreement, maintain full accounts of all revenue including other revenues derived/collected by it from and on account of use of the Project Facilities and shall provide

a) copies of half yearly accounts within 60 (sixty) Days of the end of the half year duly audited and certified by the Statutory Auditors of the Licensee and

b) in case of year end accounts, copies of audited annual accounts duly audited and certified by the Statutory Auditors of the Licensee under the Applicable Laws within 90 (ninety) Days of the close of each accounting period to which they pertain,

c) copies of the annual report including audited annual accounts duly certified by the Statutory Auditors of the Licensee under the Applicable Laws within 180 (one hundred and eighty) Days of the close of said accounting period to which they pertain.

IV On or before the fifteenth Day of April each Year or fifteen Days from the close of the accounting period, whichever is earlier, the Licensee shall provide for the preceding accounting period a statement duly audited by its Statutory Auditors giving summarized ship/vessel/berwise information on:

A. tonnage of cargo handled by category,

B tariffs charged and the amount of rates received and revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

C. Statement of all Gross Revenues accrued during the accounting period and the corresponding Revenue Share payment due to the Licensor, duly audited and certified by the Licensee's Statutory Auditor

D Statutory Auditor's certificate that the Licensee has in place appropriate systems and procedures which are being followed for accounting revenues and these are not prejudicial to the interests of the Licensor under this Agreement

V Notwithstanding anything to the contrary contained in this Agreement, the Licensor shall have the right to but not the obligation to appoint in the first instance at its cost another reputable firm of chartered accountants duly licensed to practice in India as the additional auditor (the "Additional Auditor") to audit and verify any or all matters, which the Statutory Auditors of the Licensee are required to do, undertake or certify pursuant to this Agreement including inter-alia revenues, expenses, costs, realisations and traffic.

VI. The Additional Auditor shall undertake audits at any time, with prior notice of at least 3 Days, at the sole discretion of the Licensor without any limit on the number of audits that may be undertaken.

VII. In the event of there being any difference between the findings of the Additional Auditor and the certification provided by the Statutory Auditor of the Licensee, such auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved as per the provisions of Dispute Resolution procedure set in Section 24.

VIII. Other assistance and interaction

a) The Licensee shall ensure un-hindered access and offer necessary co-operation to the Licensor and/or representatives for monitoring and inspection of operations.

b) The Licensor shall provide the Licensee with reasonable notice for such inspection and ensure that such inspection shall not interfere with the commercial operations of the Project

c) The Licensor may station its representative in the Licensed Premises for providing data and reporting information to the Licensor. The Licensee shall provide appropriate office space and tele-communication facilities for such representative





11.2.5. Employment of personnel

The Licensee shall employ qualified and skilled personnel required to operate the Project Facilities. The terms of employment may be as deemed fit by the Licensee and the Licensee shall bear all costs in this regard. All such employees shall always remain the Licensee's responsibility.

The Licensee shall indemnify the Licensor against any liability and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel during the Licence Period.

11.2.6. Responsibility of the personnel on expiry of the Licence Period

On expiry of Licence Period or early termination, as the case may be, all the employees of the Licensee shall remain Licensee's liability, in all respects, including payment of retrenchment compensation, if any, payable to them under the law for the time being in force. The Licensor shall in no way be responsible for their employment. The Licensee agrees to indemnify the Licensor against any claim made by the Licensee's employees against the Licensor in respect of their employment or as a consequence of the termination of their services by the Licensee.

11.3. Rights of Licensee

11.3.1. Preferential and priority berthing/ousting

Berthing as far as practicable shall be on arriving priority. The Licensee may offer preferential or priority berthing/ousting to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities, provided the rules for the same, including payments if any in respect of such priorities are declared in advance to the Licensor and provided no waiting vessel is overlooked twice for such berthing priority. The Licensee shall also at all times comply with Government guidelines issued in this regard from time to time, and these shall have the overriding priority. For avoidance of doubt, it is hereby clarified that the channel access shall always remain with the Licensor.

11.3.2. Unclaimed cargo

The Licensee:

I. shall at its cost, after obtaining prior written approval of the Commissioner of Customs and in accordance with other Applicable Laws, destroy or dispose of by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by the Licensee under or pursuant to this Agreement; and

II. shall at its cost, charges and expenses institute proceedings for recovery of unrealised charges, if any, in its name and/or defend any claim made in respect of such cargo by consignees/owners. The Licensor agrees to provide all reasonable assistance necessary in this regard to the Licensee.

III. shall be solely responsible for the loss, destruction or deterioration of such unclaimed cargo that it has taken charge.

11.3.3. Right to sub-contract

I. Notwithstanding anything contained in this section, the Licensee shall at no point in time sub-licence, sub-concession the entire obligations under this Agreement.

II. The Licensor may, for efficient use of the Terminal, grant approval to the Licensee to sub-contract certain operational functions/ facilities and/ or maintenance of the Terminal or any part thereof. However grant of such approval shall not absolve the Licensee of any of its

obligations and/ or liabilities under this Agreement and notwithstanding such approval the Licensee shall at all times remain responsible for its obligations under this Agreement.

III. Unless otherwise agreed to by the Licensor, sub-contracts, granted by the Licensee to third parties and long term commercial agreements entered into by the Licensee with third parties shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate at the end of the Licence Period.

IV Unless otherwise agreed to by the Licensor, the Licensor shall not be liable for any costs whatsoever in relation to such sub-contracts and long term commercial agreements entered into by the Licensee with third parties and/or as a result of the expiry or termination of this Agreement.

11.4. Obligations of the Licensor

In addition to any of its other obligations in this Agreement, the Licensor shall arrange for and provide the following:

11.4.1. Marine and port services

The Licensor shall provide/ cause to provide the following services:

I. scheduling the entry, berthing and sailing of the vessels, bunkers and water supply to vessels and scheduling of pilotage and towage on a non discriminatory basis subject to priority berthing norms set out in Section 11.3.1 and the sailing schedule as determined by the Deputy Conservator/Harbour Master of the Port depending on individual ship characteristics and safe navigational conditions. The Licensor shall be entitled to charge to the vessel owners/agents the tariffs, charges and levies for the services as per the provisions of Section 13,

II. maintenance of the entrance channel depth at - 16.0 m CD,

III waterside safety and safety of navigation;

IV. excepting as provided in Section 11.2.2 IV, carry out capital or maintenance dredging operations, if any, that may be required to ensure the depths to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities.

V. provision and maintenance of all general port infrastructure covered under the Licence, necessary for management, operation and maintenance of the Project Facilities.

11.4.2. Breach of Licensor's obligations

In the event of the Licensor's failure / breach in meeting obligations in Section 11.4 , the Licensee shall, without prejudice to any other right or remedy available to it, be compensated by the Licensor for direct cost incurred to rectify the failure, if any, suffered by the Licensee on account of such failure / breach and substantiated by appropriate bills and proof of payments.

12. Ownership

12.1. Ownership of assets

12.1.1. Land and water area

The ownership of the Licensed Premises including all land, reclaimed area and water area shall remain with the Licensor and shall vest and/ or be deemed to vest with the Licensor at all times.

12.1.2. Assets created or provided by the Licensee

The ownership of all buildings, structures, berths, wharves, cargo handling equipment, other movable assets and other chattels situated on or about the Licensed Premises or relating to or connected with the Terminal, created or provided by the Licensee, shall, subject to the provisions of this Agreement, remain with the Licensee during the Licence Period.

12.2. Entitlements of the Licensee

I. The Licensee may hypothecate and/or create charge on and/or create other Encumbrances and/or mortgage the assets created or provided by the Licensee referred to in Section 12.1.2 for the limited purpose of offering such assets as co-lateral in favour of the Lenders for securing payments of interest/ repayments of principal of any loan advanced by such Lenders, subject to appropriate documentation and the approval of the Licensor. Provided any such charge shall rank pari passu with charge of the Licensor over the said assets for recovering any amounts in respect of Revenue Share or any other payments or claims outstanding to the Licensor.

II. Provided any hypothecation and/or charge and/or other Encumbrances and/or mortgage created by the Licensee beyond the Licence Period shall be null and void and shall not be binding on the Licensor and the said charge shall stand extinguished upon payment of Final Compensation Payable to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

III. Unless otherwise agreed to and approved by the Licensor, the Financing Documents shall not be inconsistent with the provisions of this Section 12.2 and other terms and conditions of this Agreement.

IV. The Licensor shall not enter into any direct agreement with the Lender for this Project for the purpose of securing the entitlements of Licensee and/or the Lenders.

V. The Licensee shall ensure that sub-contractors of the Licensee shall not mortgage and/or create any charge on the assets or the Licensed Premises and the waterfront on which such assets are situated without the prior written permission of the Licensor.

13. Tariff setting

I. The Licensor shall render all vessel related services and shall collect port dues, pilotage fees and shifting charges, and any other Vessel Related Charges except berth hire charges for the berth built by the Licensee, as per the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time directly from the ship's agents/users for use of the Terminal. It is hereby clarified that the Licensor shall set tariffs from time to time for all services rendered and facilities provided by the Licensor without reference to the Licensee.

II. The Licensee is free to fix and collect from users, the rates and user charges for the provision of the Project Facilities, including berth hire charges for the berth built by the Licensee, Cargo Handling Charges and other charges at the Terminal for cargo handling facilities and services in respect of all permitted cargoes under the Agreement, but subject to the approval by the Regulatory Authority or any other Person, if any, appointed by the Government from time to time. Any future regulation relating to any rates, charges and tariffs would have to be adhered to by the Licensee, if applicable and would not be tantamount to Change in Law.

III. A comprehensive schedule of all rates and user charges for the Project Facilities and the time period from which such rates and user charges including the terms and conditions thereof, shall be in effect, shall be notified to the public by the Licensee.

IV. Every fixation and revision in such rates and user charges including the terms and conditions thereof shall be intimated to the Licensor and notified at the Port at least a Month before the fixation and revisions come into effect.

V Such rates and user charges including the terms and conditions thereof and any revisions thereof shall be the "Published Tariffs"

VI All such tariffs, rates and user charges shall be denominated in US Dollars and/or Indian Rupee

VII. The Licensee shall be free to give discounts in tariff and any other rates and user charges, including separate service and tariff packages for specific users. Such customization may include long-term contracts with large and/or dedicated users. However, such discounts shall be given by the Licensee only in respect of the tariffs, rates and user charges due and payable by the users, consignees/ owners or vessel owners/agents to the Licensee and not in respect of the tariff and any other charges payable by such Persons to the Licensor.

VIII. For the purpose of calculating Gross Revenue any Revenue Share payable, the maximum among the following shall be taken:

A. the actual charges levied by the Licensee or its sub-contractors for the services provided with in the scope of this Agreement

B. the tariff specified by the Regulatory Authority or any other statutory body or any other Person

C. the Published Tariffs as applicable and revised from time to time

IX. Any discounts/rebates/concessions in tariffs, rates and user charges shall not affect the Revenue Share payable to the Licensor and the revenues accrued to the Licensee shall be grossed up by such discounts/rebates/concessions for calculation of Gross Revenues

13.1. Regulation and review

The Licensee may at any time, apply for revision of tariff to be charged and recovered by it to the Regulatory Authority or any other appropriate Person as per the Applicable Laws from time to time.

13.2. Traffic projections

The Licensee shall submit annual and monthly traffic projections to the Licensor at the start of each year. The Licensee shall submit monthly and annual traffic reports and annual variance of actual traffic against annual projections and estimates envisaged in the Approved DPR.

14. Payments to the Licensor

The Licensee shall pay to the Licensor by demand draft payable in Chennai drawn on a scheduled bank in favour of Licensor, the following amounts:

I. On an annual basis, from the day the Licensee first provides cargo handling services to Users of the Terminal (which may be before the Date of Commercial Operation) or from the Date of Commercial Operation, whichever is earlier, the Licensee shall be liable to pay to the Licensor the higher of the following amounts

a) the Revenue Share

b) the Minimum Annual Guaranteed Revenue for that respective year of Commercial Operations as provided in Appendix-I

This amount shall be payable in monthly instalments in the manner provided in Sections 14.1. III and IV below

II. On the 5th of every Month the Licensee shall pay Revenue Share for the previous Month's throughput, as per the provisions of the Negotiable Instruments Act. Such Revenue Share shall be the amount equal to product of the value quoted in the commercial proposal of the Licensee, provided in Appendix 6 and the Gross Revenues accrued for the Month to the







Licensee as a result of operations of the Project and Project Facilities stated in Section 11.2.4 II

III. For every year of Commercial Operations, at the end of the first six Months, along with the seventh Month's Revenue Share, the Licensee shall pay to the Licensor the difference in Revenue Share for the six Month period and the pro rated share of Minimum Annual Guaranteed Revenue, in case such Revenue Share is less than pro rated share of Minimum Annual Guaranteed Revenue;

IV. In case the Revenue Share for the first six Month period is greater than the pro rated share of Minimum Annual Guaranteed Revenue such that the Licensee has paid to the Licensor an amount (the "**Credit Amount**") by which the Revenue Share for the six Month period is greater than the pro rated share of Minimum Annual Guaranteed Revenue, then such Credit Amount, shall be adjusted in the following six Months of that year of Commercial Operations such that on an annual basis, the higher of the annual Revenue Share and the Minimum Annual Guaranteed Revenue for such year is paid by the Licensee to the Licensor. It is hereby clarified that no unadjusted Credit Amount remaining in any year of Commercial Operations shall be carried forward to subsequent years.

V. The Gross Revenue accrued shall be calculated as provided for in Section 15 VIII and IX and shall be aggregate of the following revenues whether or not such revenues are actually realized from consignees/agents/customers:

a) all the gross revenues accruing to the Licensee for the services rendered and facilities provided by the Licensee including revenues accruing from berth hire charges for the berth built by the Licensee.

b) all the gross revenues accruing to the Licensee from handling, wharfage, stevedoring, storage and movement of cargo including transhipment

c) all the gross revenues accruing to the Licensee from shifting of cargo within the Terminal for inspection, processing, storage or loading/unloading

d) all the gross revenues and income from storage charges and demurrage/detention charges

e) all the gross revenues and income from miscellaneous services offered and facilities provided within the Terminal

f) all other gross revenues and income from charges not specified above, if any, for handling, storage and movement of cargo within the Terminal

g) any other gross revenues and income earned by the Licensee not specified above and directly attributable to the Project and Project Facilities, provided that any income earned from investing sinking funds and from investments not directly related to the Project would be excluded from the computation of accrued revenue.

VI. All Revenue Share payments payable by the Licensee shall be payable in the currency of invoice raised on users of the Terminal, irrespective of the same being converted into Indian Rupees by the Licensee or any other Person.

VII. From the Handover Date of the Licensed Premises till the date of signing of the Lease Agreement, land licence fee shall be payable by the Licensee to the Licensor. The payment of the land licence fee shall be made on the 5th of every Month for the Month. Land licence fee for the land in the Licensed Premises shall be calculated at the rate of Rs 40 per annum or part thereof per square meter or part thereof.

VIII. Upon the achievement of Financial Close, Parties shall execute the Lease Agreement. Land lease rentals, security deposit and lease premium for the Licensed Premises given to the Licensee for undertaking the Project shall be payable by the Licensee at the rate and schedule specified in the Lease Agreement in Appendix 8 and calculated from the date of the Lease

Agreement. The land lease rentals shall be payable at monthly intervals in advance for the following month on the 5th of every month.

IX The Licensee shall also pay rent or other charges for the additional land or other premises or additional utilities or services, made available by the Licensor to the Licensee in accordance with the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time. The term of the lease shall run concurrently with this Agreement and shall terminate on the termination or expiry of this Agreement.

X The Licensee and/or the users of the Terminal shall pay to the Licensor, wayleave charges as specified below, which shall be escalated at 30% after every five (5) Years.

a) For right of way along conveyor corridor: Rs 1 per metric tonne handled at the Terminal

14.1. Payment Guarantee

I. As security for payment of the Revenue Share and all other claims and payments due and payable to the Licensor under this Agreement, the Licensee shall execute and keep in force throughout the Operations Phase, a bank guarantee (the "Payment Guarantee") enforceable and encashable at Chennai from a scheduled bank acceptable to the Licensor (on or before the Date of Commercial Operations) in favour of the Licensor.

II. The value of the Payment Guarantee for the first 180 Days of Commercial Operations shall be 1/2 (One part in two) of the Minimum Annual Guaranteed Revenue for the first year of Commercial Operations as provided in Appendix 9 and shall be equal to Rs 2,50,00,000 (Rupees Two Crore and Fifty Lakhs only).

III. Thereafter the Payment Guarantee amount shall be equal to the greater of

a) previous six Months Revenue Share calculated as the sum of the payments for each Month computed as per Section 14.1 for the previous six Months, such that US Dollar denominated payments shall be converted to equivalent Indian Rupees based on the prevailing SBI TT rate on the last working day of the respective Month

b) 1/2 (One part in two) of the Minimum Annual Guaranteed Revenue for that respective year of Commercial Operations as provided in Appendix 9

14.2. Failure to pay

I. The Payment Guarantee may be invoked at any time after the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor remain unpaid. Within 10 Days of such invocation of Payment Guarantee, the Licensee shall replenish the Payment Guarantee.

II. Non-provision and/or non-replenishment of the Payment Guarantee by the Licensee shall entitle the Licensor to invoke and encash the entire balance amount of the Payment Guarantee and such default shall be considered a Licensee Event of Default.

III. The Licensor shall levy simple interest at the rate of 15% per annum to the Licensee on every delayed payment of the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor, provided such delayed payment shall not be allowed by the Licensor for a period exceeding three Months. In case of delay beyond three Months, Licensor shall treat such event as a Licensee Event of Default. The interest shall be charged from the date on which such amount becomes payable to the Licensor under this Agreement.

15. General obligations

15.1. Obligations of the Licensor

15.1.1. Assistance for approvals, permits, licenses and clearances

The Licensor shall at the request and costs, charges and expenses of the Licensee do all such acts, deeds and things that the Licensee may require to be done jointly or individually with respect to any applications or clearances (including the Environmental Clearance) sought and/or received from any authority for any issues pertaining to the Project, the requirements of the Licensor becoming necessary or essential by virtue of its ownership of land and water. The Licensor's obligation under this Section 15.1.1 shall not relieve the Licensee of its obligation under this Agreement to obtain and renew the Applicable Permits. It is clarified that the primary obligation to apply and obtain all Applicable Permits shall rest with the Licensee, including in cases where applications for Applicable Permits are required to be made in the name of the Licensor, in which event the Licensor's obligation shall be restricted to rubber-stamping the said applications.

15.1.2. Non-Interference

Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the designing, engineering, financing, construction, operation, maintenance and marketing of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal.

15.1.3. Exclusivity rights

The Licensor shall be entitled to

a) commission / grant concession to any other Party to commission additional common-user facilities for handling Coal at Ennore Port; or

b) permit the setting up of any other captive facility for Coal

if and only if any one or more of the following takes place:

I. the Terminal completes 5 Years of Commercial Operations, or

II Licensee's failure to accede to requests from the Licensor to upgrade the existing capacity to ensure higher throughput, provided such demand is reasonably justifiable in the opinion of Experts, or

III. the Terminal, is operated as a dedicated user facility and is not available to other users for handling similar type of cargo.

15.1.4. Exemption of Revenue Share

No Revenue Share shall be claimed and levied by the Licensor on items / equipment brought in for the purpose of setting up of the proposed Terminal through the Licensed Premises by the Licensee until commissioning of the Terminal. Also Revenue Share shall not be claimed and levied for any equipment / machinery brought in by the Licensee for the purpose of maintenance / augmentation of the Terminal after the commissioning thereof till the expiry of the Licence Period through the Terminal.

15.2. Obligations of the Licensee

15.2.1. Safety and security measures

I. The Licensee shall give priority to safety in its planning, development, construction, and operations of the Terminal in order to protect life, health, property and environment.

II. The Licensee shall follow all safety norms as prescribed by the competent authority.

III. The Licensee shall within 24 hours of the occurrence of any accidents at or about the Terminal or in connection with the execution of the work including its employees / workmen shall report such accidents to the Licensor. The Licensee shall also report such accidents to the competent authorities such as Labour Department (Regional Labour Commissioner), Police Department, Harbour Master, and other relevant authorities, etc. to whom such report is required to be legally submitted.

IV. The Licensor's Port is an area with restricted entry. The entry / exit of materials and personnel of the Licensee and their passage within the Port area is subject to the Port's safety and security regulations as in force from time to time.

V. The Licensee at its cost may make his own arrangements for security in the Licensed Premises provided the Licensee shall abide by the security regulations/ procedures prescribed by the Licensor from time to time. However, the overall security of the Port property shall be the responsibility of the Licensor.

15.2.2. Shareholding

I. The Licensee shall ensure that,

a) the aggregate equity shareholding of the Consortium Members in the Licensee will at no point in time be less than 51% till the issue of Completion Certificate.

b) South India Corporation Ltd, the Lead Consortium Member whose financial strengths were not credited during the bid process, holds an equity stake of not less than 26% in the Licensee at least for a period of 5 calendar years from the Date of Commercial Operations.

c) Portia Management Services Ltd, the Significant Consortium Member whose financial strengths were credited during the bid process, holds an equity stake of not less than 26% in the Licensee at least for a period of 5 calendar years from the Date of Commercial Operations.

d) South India Corporation Ltd and Portia Management Services Ltd, the Consortium Members whose strengths were credited for technical evaluation, shall continue to maintain an equity stake of not less than 11% in the Licensee for a period not less than 3 calendar years from the Date of Commercial Operations.

e) the equity shareholding in the Licensee of the Consortium Members, whose strengths were credited during the bid process will at no point in time be less than 51% till at least 5 calendar years from the Date of Commercial Operations.

II. Any change in equity stake of such a Lead Consortium Member, Significant Consortium Member, Consortium Member, or the making of a "public issue of the Licensee's shares" shall be communicated to the Licensor in writing for its prior approval which shall not be unreasonably withheld. The Licensor shall reserve the right to disallow changes in Consortium structure, if in its sole opinion it adversely affects the strengths of the Licensee (the Consortium) as originally evaluated. Any such change without Licensor's prior approval shall constitute a Licensee Event of Default.

III. The Licensee shall ensure that

a) its articles of association ("Articles") adequately reflect the relevant commitments, obligations and responsibilities of the Consortium as contained in the VoJ, the bid documents and as envisaged in this Agreement.

b) in particular, the Articles of the Licensee shall be amended within forty-five (45) days from the date hereof to include:

i) terms and conditions regarding the composition of share-holding stipulated in this Agreement; and

ii) terms and conditions related to changes in the share-holding pattern stipulated in this Agreement;

and the Licensee shall submit the amended Articles to the Licensor upon amendment.

c) Any subsequent change in the Articles which alter the provisions required by this sub-clause shall require the prior approval of the Licensor.

IV. The Licensee shall provide on an annual basis to the Licensor, a certificate of the Licensee's compliance with the provisions of Section 15.2.2 and this shall be issued by a practicing Company Secretary.

15.2.3. Submission of Financing Documents

I The Licensee shall submit the Financing Documents, if any, from time to time for the approval of the Licensor.

II The Licensee shall ensure that the Financing Documents obligate the Lenders to promptly notify the Licensor of event of default by the Licensee under the Financing Documents.

III. The Licensor shall review the Financing Documents submitted by the Licensee, and communicate its approval to the Licensee within forty five Days from the date of the receipt of such Financing Documents.

IV. In the event that the Licensor has any objection to the financing structure or Financing Documents or sources of finance it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Licensor and/ or re-submit the Financing Documents as the case may be, after incorporating the changes, modifications or corrections suggested.

V. If the Licensor does not object to the financing structure or Financing Documents submitted to it by the Licensee within Forty-Five Days of submission, the Licensor shall be deemed to have approved such financing structure and the Financing Documents.

VI Where consideration payable to the Licensee on termination is based on debt and/or equity, only the sources of funding and repayment schedule ("Original Schedule") as approved by the Licensor and as appended in Appendix 6 would be considered in estimation of such compensation.

15.2.4. Environmental protection

I. The Licensee shall be fully responsible to ensure that the environment in general, and the water area in particular, is not polluted due to the operations of the Terminal. All Applicable Laws and Applicable Permits in this connection shall be fully adhered to by the Licensee as per Good Industry Practices including any obligations or duties mandated by the Environment Clearance. The Licensee shall give clear indications about the disposal arrangements for chemical wastes and other wastes at the stage of approval of layout drawings etc. The Licensee shall be solely responsible to obtain all statutory clearances as may be required by law, excepting the Environmental Clearance, which shall be the Licensors responsibility.

II. The Licensor will provide assistance to the extent possible in this regard. However, this will not be obligatory on the Licensor, and the Licensee shall take full responsibility for obtaining the necessary clearance. The Licensee agrees and undertakes to comply with other regulations and directives concerning occupational hazards as issued by the Licensor and relevant authorities from time to time. The Licensee shall keep the Licensor informed by sending a copy of the clearances obtained from time to time.

15.2.5. Permits

The Licensee shall at all time maintain valid Applicable Permits that may be required for construction and operation of the Terminal. The Licensee at its cost shall obtain such Applicable Permits from the concerned Government Authority.

15.2.6. Cargo Restrictions

The Licensee shall ensure that except for coal, coke and project cargoes required for the construction of the Terminal, no other liquid cargo and/or dry cargo and/or containers is handled at the Terminal.

15.2.7. Expansions

Any expansions outside the scope of the Approved DPR shall be subject to the prior approval of the Licensor.

15.2.8. Insurance

The Licensee shall, at its cost and expense, purchase and maintain during the License period such insurances, from highly rated insurance carriers acceptable to Licensor, as are necessary, including but not limited to the following.

15.2.8.1. Construction Phase

Prior to commencement of any construction, the Licensee shall, at its cost and expense, purchase and maintain during the Construction Phase such insurances as are necessary, including but not limited to the following:

I. builders all risk insurance;

II. comprehensive third party liability insurance including injury or death to personnel of the Licensor and others who may enter the Licensed Premises;

III. workmen's compensation insurance;

IV. marine cum storage cum erection insurance;

V. breakdown insurance

VI. any other insurance that may be necessary to protect the Licensee, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

15.2.8.2. Operations Phase

Prior to commencement of Commercial Operations, the Licensee shall, at its cost and expense, purchase and maintain during the Operations Phase insurance to cover against:

I. loss, damage or destruction of the Project Facilities at replacement value;

II. the Licensee's general liability arising out of the Licence, including coverage for products and completed operations and blanket contractual liability for obligation of Licensee to Licensor under this Agreement

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iii. liability to third parties;

iv. terminal operators liability with errors and omissions coverage; and

v. any other insurance that may be necessary to protect the Licensee and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

15.2.8.3. Insurance companies

The Licensee shall insure all insurable assets comprised in the Licensed Premises and/or the Project Facilities through Indian insurance companies and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be effected with them.

15.2.8.4. Evidence of insurance cover

Copies of all insurance policy(ies) (or appropriate endorsements, certificates or other satisfactory evidence of insurance) shall be delivered to the Licensor by the Licensee.

15.2.8.5. Application of insurance proceeds

Subject to the provisions of this Agreement, all moneys received under any such policy(ies) shall be promptly applied by Licensee towards repair or renovation or restoration or substitution of Terminal or any part thereof, which may have been damaged or destroyed. The Licensee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Terminal or any part thereof, shall, after such repair or renovation or restoration or substitution be in nearly the same or as good condition as it was before such damage or destruction. The Licensee shall proceed with such repair or renovation or restoration or substitution work as soon as reasonably possible after such damage / destruction irrespective of whether it has received its insurance claims or not.

15.2.8.6. Validity of the insurance cover

The Licensee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Licence Period, and furnish copies of the same to the Licensor.

15.2.8.7. Remedy on failure to insure

If at any time the Licensee fails to procure or maintain in full force and effect any and/or all of insurances required under this Agreement, the Licensor may at its option procure and/ or maintain such insurance and all sums incurred by the Licensor thereof shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the Licensor by encashing the Construction/ Payment Guarantee. Failure by the Licensee to obtain the insurance coverage or certificates of insurance required pursuant to this Section 15.2.8 shall not relieve the Licensee of all or any of its obligations herein or in any way relieve or limit the Licensee's obligations or liabilities under any other provisions of this Agreement.

15.2.8.8. Endorsements

All insurance policies supplied/procured by the Licensee shall include a primary and non contributing endorsement. The general liability insurance shall name the Licensor as the additional insured, and shall include appropriate cross Liability clauses as required by the Licensor. The insurance policies shall also include a provision whereby the insurance carrier is required to provide, directly to the Licensor, thirty (30) days advance written notice before termination, change or cancellation of coverage takes effect for such policies, regardless of whether cancelled by the Licensee, insured or the insurance carrier.

15.2.8.9. Waiver of subrogation

All insurance policies supplied/procured by the Licensee shall include a waiver of any right of subrogation of the insurers there under against, Licensor, and its assigns, subsidiaries, affiliates, employees, other insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy.

15.2.8.10. Exclusion

Where this Agreement provides for remedies and/or compensations for any event due account shall be taken for remedies customarily available and/or then available through insurance and/or reinsurance covering damages related to such event. No compensation shall be paid by the Licensor for losses that should have been insured, but were not adequately insured by the Licensee

15.2.9. Assignability

I. The Licensee shall not assign or transfer all or any of its obligations or liabilities under this Agreement, or its interest in the Project assets except to the Lenders financing the Project.

II. The right of the Lenders, upon assignment of the rights and obligations under this Agreement or interest in the Project assets, to substitute the Licensee shall be subject to the approval of the Licensor as regards the identity of the transferee and the provisions of Section 19.3.7 shall apply, mutatis mutandis,

III. Any transfer of interest in the Project assets by sub-contracts shall be subject to the prior approval of the Licensor as regards the identity of the transferee and the provisions of Section 19.3.7 shall apply, mutatis mutandis.

IV. In the event of the such assets reverting to the Licensor at the time of transfer consequent to expiry of the Licence by efflux of time or on termination of this Agreement, the Licensee shall ensure that all existing charges and Encumbrances in respect of such assets, are extinguished prior to the payment of Final Compensation Payable and that the Licensor shall enjoy peaceful possession failing which the Licensor shall have the right to invoke any outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

15.2.10. Transfer of technology and know-how

The Licensee agrees and undertakes to transfer free of cost all technology and up-to-date know-how, wherever applicable, to design, construct, operate, manage, maintain and market the Terminal to the Licensor and the Licensee shall not claim any fees or charges for such transfer

At least six Months before the Scheduled Date of Transfer or on issue of Termination Notice, the designated key personnel of the Licensor shall be associated with the operations and shall be trained by relevant personnel of the Licensee at the Port to facilitate smooth transfer to the Licensor.

15.2.11. Avoidance of damage to properties

The Licensee shall take all precautions whilst carrying out the contract work against any possible damage to any property of the Licensor within the Licensed Premises. Should any such damage be done by the Licensee, it shall make good or bear the cost of making good the same, when brought to its notice without delay to the satisfaction of the Licensor.

15.2.12. Inspection

I. The Licensee shall ensure unhindered access and offer necessary co-operation to the Licensor or its representatives for monitoring and inspection of construction activities.

II. The Licensee shall allow the Licensor and/or its nominees and/or its agents to inspect the construction, development and operations of the Terminal at reasonable times and on prior intimation, access to the Project site to review the progress and to ascertain compliance with any of the requirements of this agreement.

III. Provided that failure on the part of the Licensor to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor nor shall the same be deemed to be waiver of any of the rights of the Licensor under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work/responsibility.

15.2.13. Condition survey

I. The Licensee agrees that six Months before the expiry, by efflux of time, of the Licence Period it shall, cause to be conducted at its cost by an Expert, to be appointed in consultation with the Licensor a condition survey and an inventory of the entire Licensed Premises, Terminal and Project Facilities. If, as a result of such survey, the Expert shall observe / notice that the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof have / has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Scheduled Date of Transfer.

II. In the event the Licensee fails to comply with this provision, the Licensor may itself cause the condition survey and inventory of the Licensed Premises and Project Facilities including the Terminal to be conducted and remove any defect or deficiency. The Licensee shall be promptly reimbursed by the Licensee for the costs incurred in conducting such survey and preparation of inventory as also in putting the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof in a good working condition, failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

15.2.14. Maintenance Guarantee

I. Two years prior to the expiry of the Licence, the Licensee shall as security for performance of its obligation referred in Section 15.2.2 and other obligations under this Agreement, execute and keep valid till one year after the end of the Licence Period, a bank guarantee enforceable and encashable at Chennai in favour of the Licensor issued by a scheduled bank acceptable to the Licensor for a sum of Rupees equal to 2% of the Project Cost. "Project Cost" shall mean the Gross Block of the Licensee on the last Date of the immediate preceding accounting year indexed from date of acquisition at the annual WPI index published by the Office of the Economic Advisor, the Ministry of Commerce and Industry, Government of India from time to time.

II. In the event of Licensee's failure to provide such Guarantee, the same shall be deemed to be a Licensee Event of Default and the Licensor shall accordingly be entitled to terminate this Agreement in accordance with Section 19

15.2.15. Performance standards.

The Licensor may appoint a committee of its representative and/or independent experts to assess the performance of the Terminal, at its own cost, and publish a periodic report for the information of port users

15.2.16. Interaction of the Licensee with Licensor

I. In addition to the information detailed elsewhere in this Agreement, the Licensee shall submit to the Licensor

a) Bi-annual reports on the compliance with the agreed maintenance standards and replacement schedule for assets

b) Monthly reports on commodity-wise traffic;

c) Six monthly reports on the three parties operating in the Terminal including the sub-contractors, sub-lessees and users with long term contracts;

d) Sub-contractors, sub-lessees and users with long term contracts;

e) Vessel movement reports as may be directed by the Licensor.

II. The Licensee shall provide information on traffic performance statistics of the Project Facility from time to time as may be required by the Licensor in the formats specified

III. The Licensee shall provide any additional information as the Licensor may require to ensure that the Licensee is in compliance with the terms of this Agreement.

16. Obligations and rights common to Licensor and Licensee

16.1. Compliance with laws and regulations

The Parties shall at all times perform its obligations under this Agreement in accordance with the existing law and shall at all times observe and comply with all relevant existing and Applicable Laws

16.2. No hindrance

I. The Licensor shall take adequate care to ensure that construction / development and operation of the Port will not adversely affect or cause hindrance to the construction / development and operation of the Terminal.

II The Licensee shall take adequate care to ensure that construction / development and operation of the Terminal and other facilities will not adversely affect or cause any hindrance to any other construction / development or operation of the Port.

16.3. Taxes, customs duties and charges

The Parties agree and undertake that during the License Period it shall pay all taxes, duties, levies, cess, assessment charges including but not limited to income or corporate taxes that may be levied, claimed or demanded from time to time from the respective Parties by any Government Authority or any other statutory body or corporation under any law, statute or any amendments to existing laws and statutes in respect of or in connection with the Terminal.

II. The Licensee shall ascertain tax benefits and / or concessions available for the Licensee for investing in the Project. The Licensor may issue recommendatory letters, if required, as per procedure. The responsibility for getting any notification issued by any Government Authority

for any benefits and / or concessions in taxes and / or customs duties and / or charges shall rest with the Licensee.

16.4. Responsibility for employees

The Parties shall be solely responsible for any acts or labour unrest by its respective employees or its agents / its contractors and the respective parties shall be solely liable for any loss / damage caused to the Licensee due to such acts or labour unrest.

16.5. Rights to documents

16.5.1. Licensor documents

Documents and computer programs or copies thereof, if any, provided by the Licensor to the Licensee, shall remain the property of the Licensor. The Licensee shall not use such documents, computer programs and / or copies for the purposes other than for the Project. The Licensee thereof shall return such documents, computer programs and / or copies to the Licensor on the expiry of the Licence Period or early termination of this Agreement, unless otherwise agreed upon between the Licensor and the Licensee.

16.5.2. Licensee documents

Documents and computer programs of the Licensee which are developed for operation and / or maintenance of the Project, if any, shall be handed over by the Licensee to the Licensor free of cost at the expiry of the Licence Period or early termination of this Agreement. All copyrights, intellectual property rights and other rights in such documents and programs shall vest exclusively with the Licensor and the Licensee shall not have any right to use them after expiry of Licence Period.

16.6. Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either Party or its agents which are not otherwise publicly available must be kept confidential and not disclosed to third parties or the public without the prior written approval of the other Party except as required by law or pursuant to this Agreement. This covenant shall survive on expiry of Licence Period or early termination as the case may be, of this Agreement.

16.7. Indemnification

The Licensee hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensor, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belonging to the Licensor, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Licensee or as a result of failure on the part of the Licensee to perform any of its obligations under this Agreement or on the Licensee committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensee to perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensee to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensee or its contractor(s) and / or sub-contractors and / or invitees as the case may be, in connection with or arising out of this Agreement and / or arising

out of or in connection with Licensee's use and occupation of Licensed Premises and / or Terminal.

II. In addition, the Licensee also agrees to indemnify the Licensor, its agents and employees in respect of all cost and expenses incurred by it in prosecuting or defending any action or suit (civil or criminal) by any third party which the Licensor, its agents and employees is forced to initiate to protect its interest or forced to defend in connection with or arising out of this Agreement.

III. The Licensee shall comply with all Applicable Laws in accordance with the obligations of the Licensee under this Agreement. The Licensee shall be liable for and shall defend, hold harmless and indemnify the Licensor against all losses, claims and costs arising out of the Licensee's performance of the Agreement, breach of the Agreement, claims of pensions, claims of users in the event of disruption in service caused due to berthing directives and claims of third parties in the nature of lessees, sub-lessees, construction contractors, subcontractors for services and other such parties (unless otherwise provided for in this Agreement).

IV. The Licensor hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensee, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or cost, charges / expenses incurred or put to and /or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belong to the Licensee, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Licensor or as a result of failure on the part of the Licensor to perform any of its obligations under this Agreement or on the Licensor committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensor to perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensor to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensor or its contractor(s), sub-contractor(s), invitees or employees, servants, agents of such contractor(s) and / or sub-contractor(s) and / or invitees as the case may be, in connection with or arising out of this Agreement.

V. Without prejudice to Section 17, 18 and 19, neither Party shall be liable to the other Party for any indirect, consequential, incidental, punitive or exemplary damages or for loss of profit, consequential financial or economic loss or any disruption in the flow of traffic into the Terminal for any reason whatsoever.

16.8. Obligation to co-operate

The Parties shall mutually co-operate with each other in order to achieve the objectives of this Agreement.

17. Change in Law

17.1. Change in Law

I. "Change in Law" means the occurrence of any of the following events on or after the Bid Submission Date which has a Material Adverse Effect:

A. coming into effect of any new Applicable Law except to the extent such Applicable Law was enacted prior to the Bid Submission Date and such Applicable Law takes effect without material amendment; or

B amendment, alteration, modification and repeal of any Applicable Law;

C any change in the interpretation or application of any Applicable Law by a competent court, tribunal or legislature in India having the authority to interpret or apply that Applicable Law or any interpretation of any Applicable Law by such authority which is contrary to the existing generally accepted interpretation thereof;

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

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

II Provided nothing contained in this Section 17.1 shall be deemed to mean or construe any change in direct / indirect tax laws, taxes, duties, cess, surcharge or other statutory levies effected from time to time by any Government Authority or change in tariffs by Regulatory Authority, as Change in Law.

III. For avoidance of doubt, it is hereby clarified that and risk of TPI or the Project in the scope /purview of any Regulatory Authority shall not be Change in Law.

17.2. Notification of a Change in Law

I. The Licensee shall on the occurrence of a Change in Law, give notice of such Change in Law to the Licensor in accordance with the provisions of this Section 17 as soon as it may be reasonably practicable.

II. The notice served pursuant to this section shall provide inter-alia, precise details of the Change in Law and the effect thereof on the Licensee.

17.3. Consequences of Change in Law

I In the event that such a Change in Law renders impossible the exercise by the Licensee of any of its material rights or performance by the Licensee of any of its material duties and obligations, unless such obligation is waived by the Licensor, the Licensee shall serve a notice for termination of this Agreement (Notice of Intent to Terminate). Provided that prior to service of the Termination Notice, the Parties shall consult in good faith for a period of 90 Days to mitigate the Material Adverse Effect of the Change in Law. In the event the Parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 90 Day period, either Party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved in accordance with Section 24.

II The Parties hereby acknowledge and agree that:

a) the Licensee shall be entitled to serve a Termination Notice on the Licensor provided that the Change in Law results in physical or legal impossibility of performance of the Licensee's obligations or exercise of its rights under this Agreement. The Parties shall bear the respective impact of any economic consequences of Change in Law;

b) the change in constitution, powers or scope of the regulatory authority or the appointment of a new regulatory authority by the Government for the regulation of ports shall be deemed not to be a Change in Law.

III Upon termination of this Agreement due to Change in Law the Licensor shall takeover the Project as per Section 20 and pay compensation to the Licensee as per Section 22.2.

18. Force Majeure

18.1. Force Majeure Event defined

As used in this Agreement, a Force Majeure Event shall mean any or all of the Non-Political Force Majeure , Indirect Political Force Majeure and Direct Indian Political Force Majeure Events as defined hereunder in Section 18.2 occurring on or after the Date of Award of Licence which (or the consequences of which) have a Material Adverse Effect on the Party claiming Force Majeure (the "Affected Party") in respect of its obligations in whole or in part under this Agreement and which are beyond the reasonable control, directly or indirectly, of the Affected Party (it being understood that if a causing event is within reasonable control of an Affected Party, the direct consequences shall also be deemed to be within such Party's reasonable control), and which is not due to any fault of the Affected Party and which (or the material and adverse effect of which) the Affected Party could not have prevented avoided, overcome or remedied even if the Affected Party had exercised reasonable skill and care or had acted in accordance with Good Industry Practice.

18.2. Types of Force Majeure Events

18.2.1. Non-Political Force Majeure Events

I. act of God such as storm, lightning, cyclone, hurricane, earthquake, volcanic eruption, flood or landslide

II. fire, explosion, accident caused by a person not being the Affected Party or any of its employees or agents or any of its contractors or sub-contractors or any of their respective employees or agents and not being due to inherent defects of the Terminal or any part thereof or the failure of the Licensee to properly design, construct, develop, operate and maintain the Terminal or any part thereof

III. epidemic or famine

IV. radioactive contamination, nuclear blast or ionising radiation not due to an act of war

V air crash, shipwrecks

VI. strikes or lockouts interrupting supplies and services to the Project (other than those involving the Licensee, its employees or agents or its contractors or sub-contractors or any of their respective employees or agents or any strike or lockout attributable to any unfair policy or practice of the aforementioned Persons) not being an Indirect Indian Political Force Majeure Event as set forth in Section 18.2.2 under this Agreement

VII any event or circumstance of a nature analogous to any of the above

18.2.2. Indirect Indian Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Indirect Indian Political Force Majeure.

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

II. industrial action strikes by the employees of the Licensee or industry wide or state or nation wide strikes of the railways, oil companies or truckers.

III. any failure or delay of a main contractor executing a contract of significant value for the Project but only to the extent caused by another Indirect Indian Political Force Majeure Event,

IV. any event or circumstance of a nature analogous to any of the above.

18.2.3. Direct Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Direct Political Force Majeure

I Change in Law affecting construction and operation of the Terminal under the provisions of this Agreement, and only when the provisions of Section 17 cannot be applied,

II. expropriation or compulsory acquisition by any Government Authority of any material assets or rights of the Affected Party or its contractors or agents except to the extent that it constitutes a remedy or sanction lawfully exercised by the Government Authority as a result of any breach by the Affected Party, its contractors or agents of any Applicable Law,

III. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Licensee or any of its contractors to perform their respective obligations under the Agreement provided that such delay, modification, denial, refusal or revocation did not result from the Licensee's or any of its contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

18.2.4. Force Majeure exclusions

None of the following shall, without limitation, constitute a Force Majeure Event:

I. late or non-delivery of equipment, materials, spare parts, water, power or other utilities for the Project unless the delay is due to a Force Majeure Event as defined above

II. insufficiency of funds or non-availability of working capital for any reason whatsoever

III. non-performance resulting from normal wear and tear typically experienced in the operations of / on the Terminal or due to faulty design and/or implementation

IV non-performance caused by or connected with the Licensee's / Licensor's

A. negligent or intentional acts or omissions

B failure to comply with the Applicable Laws and Applicable Permits then in effect

C. default under this Agreement by either Party.

18.3. Obligation of the Parties to perform

I The obligations and liabilities of the Parties under this Agreement would continue as long as the performance is not impeded by Force Majeure Event as defined above in Section 18.1. The affected Party shall resume performance of its obligations under this Agreement as soon as possible after the Force Majeure Event ceases to exist.

II. Provided that the performance of the Licensee's obligations and liabilities shall, for the Period of Force Majeure, be governed as per and be subject to the Provisions of Section 18.4. Nothing in this Section 18 absolves the Licensee from the obligation of payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

18.4. Procedure

18.4.1. Notice

I. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event as soon as the same arises, and in any event within 10 (ten) Days after the knowledge by the Affected Party of such Force Majeure Event or after the Affected Party ought to reasonably have knowledge of its occurrence and the other Party acknowledges that Force Majeure would apply.

II. Notice shall inter-alia include full particulars of:

a) the nature of each Force Majeure Event

b) the date and time effective when the performance by the Affected Party of its obligations under this Agreement was affected

c) the effect which such Force Majeure Event is having on the performance by Affected Party of its obligations under this Agreement

d) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events or mitigate the damage and

e) an estimate of the period of time that the Affected Party shall be unable to perform its obligations and/or continue to be materially adversely affected by the Force Majeure Event and

f) any other relevant information

III. Failure by the Affected Party to give notice to the other Party within the time period specified above shall not prevent the Affected Party from giving such notice at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies as envisaged in Section 18.7 for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Section 18.4.1.

18.4.2. Reporting requirement

For so long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with regular (and not less than Monthly) written reports containing

I. the information called for by Section 18.4.1 and

II. such other information as the other Party may reasonably request and required under this Agreement

The Affected Party shall also provide to the other Party reasonable facilities including site inspection for obtaining further information about the Force Majeure Event or circumstance alleged to constitute a Force Majeure Event.

18.5. Period of Force Majeure

I. In this Section 18, reference to a period of Force Majeure shall mean the period from the date and time specified in the notice given by the Affected Party in respect of an event or circumstance of Force Majeure, until the earlier of:

a) such time as the performance by the Affected Party of its obligations hereunder is no longer or would no longer have been, if the Affected Party had complied with its obligations under this Section 18, materially and adversely affected by such event or circumstance of Force Majeure and

b) if this Agreement is terminated pursuant to Section 18.8 by reason of the event or circumstances of Force Majeure, the date in respect thereof of service of such notice

II. When the Affected Party is able, or would have been able if it had complied with its obligations under the provisions of this Section 18, to resume performance of all of its obligations, under this Agreement, affected by the occurrence or continuation of an event or circumstance of Force Majeure, then the Period of Force Majeure relating to such event or circumstance of Force Majeure shall be deemed to have ended and the Party affected by the Force Majeure Event shall forthwith give notice to that effect to the Other Party

III. In the event that such notice is not tendered by the Affected Party to the other Party within a week from the expiry of the Force Majeure period, the other Party may serve such notice to the Affected Party.

18.6. Consultation and duty to mitigate

I. For so long as the Period of Force Majeure is continuing, the Affected Party shall consult with the other Party and the Affected Party shall use all reasonable endeavors to alleviate its effects on the performance of its obligations under this Agreement. The other Party shall offer reasonable assistance to the Affected Party to alleviate the effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement

II. The Affected Party shall use the insurance proceeds to mitigate the impact of the Force Majeure Event.

18.7. Consequences

Provided that the Affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 18.6, and during the Force Majeure period continues to comply with the same, the Affected Party shall be entitled to the following relief:

I. the obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be suspended for the Force Majeure period, as the case may be;

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

III. the time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended till the period it lasts plus time taken to mitigate the effect of the Force Majeure, as the case may be, and

IV. the term of this Agreement shall be extended till the period Force Majeure lasts plus time taken to mitigate the effect for the Force Majeure period, as the case may be.

18.8. Termination due to Force Majeure Event

I. In the event that any such Force Majeure event shall physically impede or prevent the Affected Party from performing its obligations under this Agreement for more than 90 Days from the date of commencement of such Force Majeure event, the Parties may mutually decide the terms upon which the Licensee shall continue the performance of its obligations. If the Parties are unable to agree on such terms within a period of 90 days, then the Licensee shall have the option to terminate the Agreement, except in case of Direct Political Force Majeure Event for which either parties shall have the right to terminate this Agreement.

II. If the Licensee does not exercise the right of termination and the Force Majeure Event (being an event other than Direct Political Force Majeure Event) continues for a period of one year from the date of commencement of Force Majeure Event, then the Licensor shall also have the right to terminate this Agreement.

19. Default and termination

19.1. The Licensee Event of Default

The Licensee Event of Default includes any of the following events besides other events described as such elsewhere in this Agreement, unless such an event has occurred as a consequence of the Licensor Event of Default, Force Majeure Event or a Change in Law which results in consequences set out in Section 17.3.2 or a Force Majeure Event:

I. the Licensee's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement.

II. the Licensee's failure to achieve Financial Close within 12 months from the Date of Award of Licence

III. failure to commence Commercial Operations within 30 months from the Zero Date and including such extended period for construction as may be approved by the Licensor

IV. repudiation of this Agreement by the Licensee or the evidencing of an intention by the Licensee not to be bound by the terms of this Agreement.

V. the Licensee engaging or knowingly allowing any of its employees, agents, contractors or representatives to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law in the course of any activity undertaken pursuant to this Agreement.

VI the Licensee assigns its rights, title and interest in the Agreement without the prior written approval of the Licensor

VII. the Licensee sub-contracts the Licensed Premises or Project Facilities or any part thereof without the prior written approval of the Licensor

VIII the Licensee or any of its employees, agents, contractor and representatives engage in or knowing take part or fail to take action to prevent the commission of illegal activities at the Port

IX. any representation made or warranties given by the Licensee is found to be false or misleading.

X any information provided by the Licensee under this Agreement is found to be false or misleading or a material misrepresentation

XI the Licensee is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation or reconstruction provided that the property, assets and undertaking of the Licensee are transferred to its successor; and provided that such amalgamation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the Licensee's obligations and the technical, financial and operating capability of the successor should be satisfactory to the Licensor and is not prejudicial to national interest as determined by the Licensor;

XII levy of an execution or distraint on the Licensee's assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 90 Days.

XIII. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Licensee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.

XIV. the Licensee abandons the construction or operation of the Terminal and/or any of the Project Facilities for a continuous period of 90 days.

XV. persistent failure on the part of the Licensee to operate and promote activities at the Terminal and provide users with services in accordance with the principles of Good Industry Practice and in accordance with the provisions of this Agreement.

XVI. failure of the Licensee to comply with statutory obligations under Applicable Laws

XVII. default to Lenders by the Licensee

XVIII. failure to apply insurance proceeds as per the provisions of the Sect on 15.2.8.5

XIX. failure to pay Revenue Share, land licence fee and land lease rentals as per provisions of Section 14.

XX. failure to furnish and/or replenish and/or keep valid any Guarantee as required under this Agreement

XXI violation of strategic, security, environmental or conservancy concerns on the Licensee's part





XX.1. Failure to ensure shareholding as per the provisions of the Section 15.2.2.

19.2. The Licensor Event of Default

The following events (unless arising as a result of a Force Majeure, or Licensee Event of Default or a Change in Law) would constitute Licensor Event of Default:

I. the Licensor's failure to perform or discharge any of its material obligations in accordance with the provisions of this Agreement.

II. cumulative day for day extension of 180 Days, only when such extension is directly attributable to Licensor obligations as set out in Section 3.1.1 and Section 10.1.1 II

III. any representation made or warranties given by the Licensor under this Agreement is found to be false or misleading.

IV. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Licensed Premises in any legal proceedings initiated against the Licensor.

V. dissolution of the Licensor or occurrence of any structural changes within the present constitution of the Licensor which have a Material Adverse Effect on the rights and obligations of the Licensee under this Agreement, or the transfer of the Licensor's undertaking and statutory powers or any material part thereof, unless such dissolution or structural change or transfer is in connection with privatisation or other restructuring of all or any substantial part of the Licensor, and the Licensor's successor is able to perform the Licensor's obligations under this Agreement.

VI. repudiation of this Agreement by the Licensor or the evidencing of an intention by the Licensor not to be bound by the terms of this Agreement.

19.3. Consequences of default

In the event of a Licensor Event of Default or Licensee Event of Default ("Event of Default"), the termination procedure as set out in this section shall apply.

19.3.1. Notice of Intent to Terminate

I. On the happening of any Event of Default as set out above, the non defaulting Party may initiate termination of this Agreement by delivering a notice to the defaulting Party of intention to terminate this Agreement (Notice of Intent to Terminate). The non-defaulting Party shall also send a copy of the Notice of Intent to Terminate to the Lenders.

II. The Notice of Intent to Terminate shall specify with reasonable detail the defaults committed by the defaulting Party.

19.3.2. Lenders rights to rectify

I. Without prejudice to Section 19.3.3 below, if Notice of Intent to Terminate is issued by the Licensor for non payment of any amount due and payable by the Licensee or for any other Licensee Event of Default, the Lenders shall within a period of 90 Days from the date of issue of the Notice of Intent to Terminate, have the right to rectify the default and take all such acts as may be necessary for such purpose

II. In the event Lenders exercise the right to cure the default, the Lenders shall pay all sums then due and payable to the Licensor or in any other manner assist the Licensee in rectifying the Event of Default. If the Event of Default is cured within such period of 90 Days:

a) The Notice of Intent to Terminate shall stand revoked without prejudice to the rights of Licensor to issue similar notice for any subsequent breach or any other breaches by the Licensee; and

b) The Licensee shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate was not issued.

III. The Lenders rights under this Section 19.3.2 shall continue to remain in force during the termination procedure and till the issue of the Termination Notice.

19.3.3. Remedy period

I Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of 90 Days ("Remedy Period") to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.

II. During the Remedy Period, the defaulting Party may continue to undertake efforts to cure the default, and the non-defaulting Party shall not, by any act or omission, impede or otherwise interfere with the defaulting Party's endeavours to remedy the Event of Default.

III During the Remedy Period, both the Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

19.3.4. Withdrawal of Notice of Intent to Terminate

If, during the Remedy Period, the defaulting Party rectifies or remedies the default to the satisfaction of the non defaulting Party or the non defaulting Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the non defaulting Party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders

19.3.5. Termination Notice

I Upon the expiry of the Remedy Period, unless the Parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting Party or a Lender, the non defaulting Party may terminate this Agreement by giving a 90 Days written notice ("Termination Notice") to the defaulting Party, with a copy to the Lenders. The date of expiry of the Termination Notice shall be the date of termination of this Agreement.

II. Upon the expiry of such notice period unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement, this Agreement shall stand terminated on the Scheduled Date of Transfer and the provisions of Section 20 and 21 will be applicable.

19.3.6. Transfer Information Notice

I. Upon service of the Termination Notice in accordance with the provisions of this section on the defaulting Party, or on the service of a Termination Notice for Change in Law or Force Majeure, the Licensor shall be entitled to serve upon the Licensee a notice (the "**Transfer Information Notice**") calling upon the Licensee to provide within 30 Days the following:

a) all or any data or records regarding the operation and/or maintenance of the Terminal and the Project;

b) Statement of all capitalised assets and capital work in progress, as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, certified by the Statutory Auditors

c) inventory of all assets prevailing at the Licensed Premises and Terminal on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

d) inventory of all assets reflected in the balance sheet of the Licensee or affiliates, and/or subsidiaries on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

e) statement of debt outstanding as per original schedule of repayments (Debt Due) and paid up equity as on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, supported by Lenders certificate and Statutory Auditors certificate, to enable an estimation of the likely compensation, if any, payable by the Licensor to the Licensee.

f) statement of cash and cash equivalents as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

g) statement of net current assets as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

h) statement of equity and reserves as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

i) any other information or records regarding the Licensee, its business, assets and liabilities

II. On receipt of the Termination Notice, the Licensee shall cause to be conducted, by third party Experts, a condition survey of the entire Licensed Premises, Terminal and Project Facilities at the expense of the Party identified as per provisions of Section 15.2.13 to ascertain the condition and quality of the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof provided by the Licensee and to ascertain whether or not the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof provided by the Licensee are in working condition and whether or not the Licensee has complied with the provisions of this Agreement. A report by such Experts including an inventory and the condition of the assets prevalent at the Licensed Premises, Project Facilities and Terminal shall be submitted to the Licensor within two months of receipt of such notice.

III. If, as a result of the condition survey, the Licensor shall observe/notice that the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof have/has not been operated and maintained in accordance with the requirements hereof under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

IV. In the event the Licensee fails to comply with the provisions of this Agreement the Licensor may itself cause the condition survey to be conducted. The Licensor shall be promptly compensated by the Licensee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof in good working condition failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

V. The Licensee shall also offer cooperation to the independent Experts appointed for condition survey.

19.3.7. Lenders' rights of substitution

I. If the Termination Notice is issued by the Licensor for a Licensee Event of Default:

A. within 30 Days from the date of issue of the Termination Notice, the Lenders (those to whom at least 75% of the debt is due) or such Lenders' agents may approach the Licensor with a request to replace the Licensee by another operator ("**Replacement Notice**"); and

operating the Terminal under this Agreement. The Replacement Notice shall indicate the name(s) of the Nominated Developer(s) (ND) proposed to substitute the Licensee for the purpose of this Agreement. The Licensor and the Lenders will then consult for a period of 30 Days as to the suitability of the ND. If a ND does not meet the qualifying criteria, then such ND shall be deemed not to be technically, financially or managerially competent to operate the Terminal and Licensor shall be entitled to reject such ND. The Licensor shall also be entitled to reject such ND on grounds of public interests.

B. On appointment of a new ND in accordance with the provision of Section 19.3.7 I A above, the novation of this Agreement shall be effected by the Licensor with the new ND and the Licensee shall transfer all rights, title and interests in the Leased Premises and the Project to the ND, and this Agreement shall come to an end. The decision of the Licensor as to the acceptability of the ND shall be final and binding.

II. If within 90 Days from the date of Termination Notice, the ND acceptable to the Licensor does not execute a novation of this Agreement, the Licensor may terminate this Agreement on the expiry of the 90 Day period as if the Replacement Notice had been served.

19.3.8. Obligation of the Licensor and Licensee

I. Till the Transfer Date, the Parties shall subject where applicable to the provisions of Section 18, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

II. From the date of issue of Notice of Intent to Terminate till withdrawal of the same or the Transfer Date, the Licensee shall not sell/dispose/modify or take any steps to sell/dispose/modify any of the assets or material contracts of the Licensee without prior written permission of the Licensor.

19.4. Step-in rights

I. Notwithstanding anything in this Agreement the Licensee agrees that the Licensor (on its own or acting on behalf of the Government of India) or the Government of India shall be entitled to operate the Terminal on the occurrence of the following events:

A. Licensee Event of Default;

B an emergency (being a condition or situation which in the reasonable opinion of the Licensor, poses a significant threat to the safe operation of the Terminal/Port or which seriously endangers the security of persons, plant or equipment); or

C. for national security and/or national interests reasons.

II. In the event of a Licensee Event of Default, the Licensor may (but shall not be obliged) operate the Terminal upon the issue of the Termination Notice under the provisions of Section 19. Notwithstanding the exercise of step in rights, the provisions of Section 19 shall continue to apply.

III. Upon the occurrence of the events specified in Section 19.4 I B and Section 19.4 I C above, the Licensor, or Government of India may exercise step-in rights during which period:

D. the Licensor shall be entitled to all revenues and liable for all standing, and operating expenses including debt servicing relating to the facilities taken over;

E the Licensor shall not be liable to compensate the Licensee or any other Person or the long-term users for any losses or estimated loss of profits during such period or any return on equity

f. after a maximum continuous period of one year, the Project Facilities shall revert to the Licensee in the same condition, save for normal wear or tear. In the event of any dispute regarding the condition of Project Facilities reverting to the Licensee, the same may be referred to the Expert Committee.

iv. Excepting in the case of the events specified in Section 19.4 I A the Licensee shall be entitled to an extension of the Licence Period for the duration of exercise of step in rights by the Licensor, or the Government of India.

v Excepting in the case of the events specified in Section 19.4 I A, without prejudice to Section 19.4 IV, in the event that the step-in rights are exercised by the Licensor, or the Government of India for a cumulative period in excess of one year during the Licence Period, the parties shall determine, in good faith, the compensation payable to the Licensee for the loss of income. In the event that the parties are unable to agree on the compensation, the either Party may invoke dispute resolution procedure as per the provisions of Section 24.

20. Scope of transfer

1. The scope of take-over of assets as provided in this Agreement pursuant to termination hereof for any reason or expiry of the Licence shall include the following assets free from all Encumbrances (the "Transfer Assets"):

a) the Licensed Premises and all assets prevailing at the Licensed Premises and the Terminal on the date of issue of Notice of Intent to Terminate and shall, interalia, include:

i) all land and buildings;

ii) plant and machinery; cargo handling equipment, storage facilities, and any other equipment

iii) spare parts;

iv) such deeds and documents as may be necessary for effectively transferring (in respect of the above) rights, title and all other interests under this Agreement in favour of the Licensor;

v) the benefits of all rights and interest in all unexpired insurance, guarantees and contractor warranties if so desired by the Licensor; and

vi) all documents, manuals, records, technical know-how intellectual property rights, etc as may be required for the efficient operation of the Terminal.

b) all capitalised assets and capital work in progress, as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries and all capitalised assets in the asset register of the Licensee, its affiliates, and/or subsidiaries on the date of issue of Notice of Intent to Terminate as certified by the Statutory Auditor

c) All assets shall be transferred free of any and all Encumbrances

d) For avoidance of doubt it is expressly clarified that the takeover shall exclude

i) All current assets and liabilities attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates and/or subsidiaries

ii) cash in hand and cash at bank, financial investments, loans and advances, other current assets if any, the benefit of any refund of tax attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries.

iii) any trade and book debts or receivables accruing to the Licensee prior to the date of Notice of Intent to Terminate





iv) such agreements, contracts or arrangements as notified by the Licensor

II. Furthermore, notwithstanding anything contained in this clause no liability (accrued or contingent) of Licensee or relating to the Project arising on account of actions or inactions of the Licensee prior to the Transfer Date shall be assumed by the Licensor consequent to such transfer

III. Unless otherwise agreed to, miscellaneous assets and other intangible assets (such as goodwill) shall also stand excluded from the scope of asset takeover and compensation.

IV. The Licensee undertakes to ensure that the provisions of this section shall be reflected in any agreement or contract that may be entered into between the Licensee and the sub-contractors or any other party for construction of assets or provision of services.

V. Notwithstanding anything contained herein and without prejudice to any of its other rights under this Agreement, the Licensor shall be entitled to invoke and encash the entire amount under any subsisting Guarantee (s) provided by the Licensee, if the termination is on account of a Licensee Event of Default. The compensation payable for such transfer is detailed in Section 22

21. Consequences of termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Licence Period by efflux of time or due to a Force Majeure Event or an Event of Default or Change in Law.

21.1. Licensees obligations to transfer assets

I. On or before the Transfer Date, the Licensee shall subject to the provisions of this Agreement :

A. handover/surrender peaceful possession of the all Transfer Assets to the Licensor free of cost and without Encumbrance

B. transfer all its rights, titles and interest in or over the Transfer Assets comprised in the Project Facilities to the Licensor and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

C. The Licensee shall, at its cost, transfer to the Licensor all such Applicable Permits which the Licensor may require and which can be legally transferred

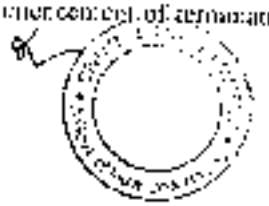
D. The Licensee shall at its cost transfer/assign such of the contracts, which the Licensor may require to be transferred in its favour subject to the counterparties to such contracts consenting to such transfer/ assignment. The Licensee shall entirely at its cost, terminate all such contracts which are not transferred/assigned to the Licensor. Notwithstanding anything contained in this clause the Licensor shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Licensor are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into.

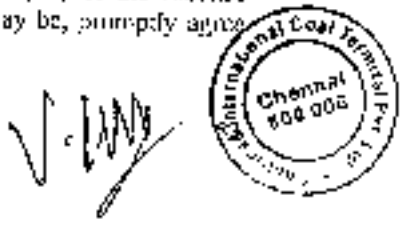
21.2. Licensors obligations

I. On the Transfer Date, the Licensor shall subject to the provision of this Agreement, pay to the Licensee the compensation as the case may be in accordance with the provisions of Section 22.

21.3. Obligation of the Licensor and Licensee

I. The Licensor and the Licensee shall at least six months prior to the expiry of the Licence Period or upon commencement of termination procedure as the case may be, promptly agree





upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets and payment of Final Compensation Payable as the case may be on the Transfer Date. During this period, the designated key personnel of the Licensor shall be associated with the operations of the Project Facilities (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Licensor on the Transfer Date.

22. Compensation payable on termination / expiry

22.1. Early termination due to Licensor Event of Default

In case of termination due to Licensor Event of Default occurring at any time during the Licence period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due plus Paid up Equity outstanding as on date of issue of Notice of Intent to Terminate plus 20% premium on such Paid up Equity, subject to the provisions of Section 2.7 V.d), Section 15.2.3 and Section 22.6.

For avoidance of doubt it is hereby clarified that the compensation shall be calculated as

Debt Due + Paid up Equity + (0.2 x (Paid up Equity))

For avoidance of doubt it is hereby clarified that no payments shall be made by the Licensor to the Licensee for the unexpired/unexhausted period of the Licence resulting from such early termination.

22.2. Early termination due to Change in Law or Force Majeure

In case of termination due to Change in Law or Direct Political Force Majeure occurring at any time during the Licence period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due subject to the provisions of Section 2.7 V.d), Section 15.2.3 and Section 22.6.

For avoidance of doubt, it is hereby clarified that the Licensee shall transfer the Transfer Assets to the Licensor free of any consideration and free of any Encumbrance, in the event of termination of this Agreement pursuant to any Force Majeure Event other than Direct Political Force Majeure Event.

22.3. Early termination due to Licensee Event of Default

In case of termination due to Licensee Event of Default occurring at any time during the Licence Period, the Licensor shall pay to the Licensee, subject to the provisions of Section 2.7 V.d), Section 15.2.3 and Section 22.6, the lower of:

(i) the aggregate fair value, as determined by the Expert being a reputed valuer, of Transfer Assets (excluding any assets provided by the Licensor), LESS amounts if any due to the Licensor from the Licensee under the provisions of this Agreement;

(ii) the Debt Due

22.4. Compensation payable on expiry of Licence

In the event of the expiry of the License by efflux of time (the Licence having run its full course), the Licensee shall transfer the Transfer Assets to the Licensor, free of any consideration and free of any Encumbrance.

22.5. Clarification

For avoidance of doubt, it is hereby clarified that the valuation of the compensation payable to the Licensee shall not be done on a "going concern" basis under any case of termination.

For avoidance of doubt, it is further clarified that the liability of EPL in case of early termination of the Licence Agreement shall be on the basis of Project Cost that shall be the lowest of the following:

A. Cost of Project as per the Financing Documents approved by EPL.

B. Completion of the project certified by Statutory Auditors.

C. Aggregate fair value, as determined by an expert being a reputed valuer.

Further, the Project cost arrived at as above shall be subject to a ceiling of Rs.350 crores and funding pattern indicated by you in Section XIV of the Detailed Technical Proposal submitted by you .

It is further expressly clarified that the compensation for transfer shall be paid at the time of and simultaneously with transfer of the Transfer Assets and shall always be payable in Indian currency.

22.6. Final Compensation Payable

I. On early termination of this Agreement (other than by normal expiry of Licence Period by efflux of time), the aggregate of the compensation calculated in terms of sub-clauses 22.1 to 22.5 and payable shall be hereafter defined to be the "First Estimate of Compensation". The First Estimate of Compensation shall be reduced by such portion of the positive value, if any, of net current assets as is in excess of the paid up equity and reserves of the Licensee as on the date of issuance of the Notice of Intent to Terminate.

II. The First Estimate of Compensation shall be corrected for any outstanding penalties and dues payable by the Licensee to the Licensor and/or any damages suffered by the Licensor and attributable to the Licensee.

III. The First Estimate of Compensation shall also stand reduced by the amount of any insurance proceeds receivable and/or any compensation receivable from any body and/or any amount payable by the Central Government and shall be corrected in respect of any adjustments that may be deemed necessary by Experts appointed for the purpose.

IV. The First Estimate of Compensation shall be further reduced by any discrepancy found in respect of the Transfer Assets as compared with the assets recorded in the books of the Licensee as on the date of the issuance of the Notice of Intent to Terminate, with the value of such discrepancy to be determined by the Expert referred to in Section 22.3 above.

V The final amount so arrived at after the aforesaid adjustments would be the "Final Compensation Payable" to the Licensee upon early termination, subject to the provisions of Section 15.2.9 IV. The Final Compensation Payable shall be paid by the Licensor on transfer of Transfer Assets.

22.7. Payment of compensation to Lenders

I. The Licensee hereby irrevocably authorises the Licensor to pay to the Lenders or at their instruction to any designated bank account in India the Final Compensation Payable to the Licensee. The Licensee confirms that upon such payment being made, the Licensor shall stand duly discharged of its obligations regarding payment of Final Compensation Payable under this Agreement and the charge created by the Licensee in favour of the Lenders on any of its assets taken over by the Licensor shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Licensee further confirms that payment of Final Compensation Payable by Licensor in accordance with this Section 22.7 shall be a valid discharge to the Licensor in respect of Licensor's obligation regarding payment of Final Compensation Payable to the Licensee under this Agreement.

II Provided, notwithstanding anything inconsistent contained in this Agreement, the Lenders or the Lenders as the case may be shall be entitled to remove at his/ their cost all such movables which are not taken over by the Licensor and to deal with the same in accordance with their respective rights under law.

III. Provided further, if there are no amounts outstanding under the Financing Documents and the Licensee furnishes a certificate to that effect issued by the Lenders to the Licensor, the Final Compensation Payable shall be paid by the Licensor to the Licensee directly where such payment is due to the Licensee.

22.8. Transfer fee and charges

Transfer fees, charges, and other incidental expenses incurred at the time of termination or transfer on expiry of Licence by efflux of time or on early termination shall be borne by the Licensor and the Licensee in the following proportion:

Head of Charge	Onus
1. Transfer fees or stamp duties, recording costs, notary fees	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
2. Fees to third party experts for any required inspections, condition surveys or certifications	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
3 Internal costs and expenses of each Party (management time, cost of surveys, inventories, inspections etc)	• To be borne by each Party respectively

22.9. Licensor's liability

In the event of expiry of Licence by efflux of time or termination of this Agreement, the Licensor shall not be liable for any liability and/or damages to the Licensee or to any other third party except in accordance with the provisions of this Section 22.

23. Procedure for transfer

23.1. Time for transfer

I. In case of expiry of Licence by efflux of time, the Licensor shall issue a Transfer Information Notice at least 24 months before the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 19.3.5

II In case of early termination of the Agreement, the Licensor shall issue a Transfer Information Notice indicating the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 19.3.6.

III. The scope of transfer of the Transfer Assets, the consideration payable, and the transfer fees and charges at the time of transfer consequent to termination and/or expiry of Licence by efflux of time, shall be determined in accordance with the provisions of Section 20 and Section 22.

23.2. Transfer of the facilities and premises

I In the event of expiry of Licence by efflux of time, the final transfer of the Transfer Assets shall be effected within 60 Days of the Scheduled Date of Transfer ("Actual Date of Transfer")

i. In the event of early termination due to Licensor Event of Default, the transfer of Transfer Assets shall be effected as specified in the Transfer Information Notice and as provided for in Section 23.1.2.

23.2.1. Delayed transfer of assets

ii. If for any reasons other than those attributable to the Licensor the Licensee fails to transfer the Transfer Assets on the Transfer Date in accordance with this Agreement, there shall be no suspension of the operation and maintenance of the Project Facilities and

a) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the earlier of the fifth of the Month for the previous Month or the date of transfer.

b) the Licensee shall be liable to pay to the Licensor, for every Day of delay, liquidated damages computed at the rate of the average daily after tax profits earned by the Licensee during the three years immediately preceding the Transfer Date,

iii. Provided nothing contained herein shall be deemed or construed to authorise delay in transfer of assets, rights and contracts by the Licensee to the Licensor in accordance with the requirements thereof under this Agreement and without any compensation for termination of such agency arrangements.

iv. In case the transfer of Transfer Assets by the Licensee to the Licensor is delayed for reasons attributable to the Licensor, there shall be no suspension of the operation and maintenance of the Project Facilities and the Licensee shall nonetheless continue to operate the Project Facilities, but as agent of the Licensor. Provided however,

a) the Licensee shall, as agent of the Licensor continue to operate and maintain the Project Facilities until completion of the transfer formalities, for an agency remuneration of Rs 10,000 (Rupees Ten Thousand) per year or part thereof and

b) the Licensee shall not be liable to pay any liquidated damages;

c) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the earlier of the fifth of the Month for the previous Month or the date of transfer

23.2.2. Passing of risk

Until the Actual Date of Transfer, the Transfer Assets shall remain at the sole risk of the Licensee, and the Licensee shall be solely responsible for any loss of or damage caused to or suffered by the Licensee for any reasons whatsoever to whole or any part of the Project, unless such loss or damage caused to or suffered by the Licensee is due to any act of default or omission or negligence on the part of the Licensor.

24. Dispute resolution

Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be amicably resolved by the Expert Committee in accordance with the procedure set forth in Section 24.1

24.1. Expert Committee

I. In the event a Party issues a notice (Expert Committee Notice) to refer the dispute to the Expert Committee, the parties may finalise a choice of an independent expert in the field of port and harbour engineering and/or financial and cost accounting as the case warrants within one week of such notice, failing which, each Party shall appoint one independent expert within two weeks of the Expert Committee Notice.

II. The two experts will jointly appoint a third expert with required experience within one week of their appointment. The 3 Experts jointly shall constitute the Expert Committee.

III. Such independent experts shall have adequate experience in the design, construction, operation and maintenance of port facilities and/or port finances, accounting and costing practices as the case warrants.

IV. The Party issuing the Expert Committee Notice will provide the Experts with written submission of the nature of the dispute and the claim of the other Party along with supporting documents within one week of the constitution of the Expert Committee. Within one week of the furnishing of such submission, the other Party may choose to provide written submissions defending its position.

V. The Expert Committee may call on either Party to furnish additional information as deemed necessary to solve the dispute

VI The Expert Committee shall give the majority decision to both Parties within three weeks of the receipt of written submission from the contracting Parties.

VII. The Parties shall share the costs of the engagement of the Expert Committees equally.

VIII. Pending the submission of and/or decision on a Dispute, difference or claim by the Expert Committee, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such decision.

24.2. Arbitration

I. If the dispute has not been resolved by the Expert Committee as evidenced by the signing of the written terms of settlement within 90 Days (or such other extended period as mutually agreed by the Parties) after the receipt of the Expert Committee Notice, then such dispute shall be submitted to arbitration and shall be finally determined in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof.

II. The arbitration shall be by a three-member arbitral tribunal comprising one arbitrator appointed by each of the Parties, which appointment shall be made within fifteen (15) days of the first request for arbitration, and the two arbitrators so appointed, appointing the third arbitrator, who shall be the presiding arbitrator. Provided neither Party shall nominate any of their employees as arbitrator

III. The venue of arbitration shall be Chennai and the language of arbitration shall be English

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

V. Prior to commencement of arbitration, the arbitral tribunal shall first determine at an initial meeting:

a) The arbitrators fees

b) Period of completion of the arbitration process

25. Miscellaneous provisions

25.1. Amendments etc.

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

25.2. Survival of obligations

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

25.3. Agreement to override other agreements; conflicts

This Agreement constitutes the entire agreement between the Licensee and the Licensor concerning the subject matter hereof. This Agreement supersedes all previous agreements or arrangements between parties, including any memoranda of understanding entered into in respect of the contents hereof, and represents the entire understanding between the parties in relation thereto.

In the event of any inconsistency between the text of the clauses of Part I of this Agreement and the Part II of this Agreement, the text of the clauses of Part I of this Agreement shall be controlling.

25.4. No waiver; remedies

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

25.5. Severance of terms

If any provisions of this Agreement are declared invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

25.6. Joint responsibility

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

25.7. Language

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

25.8. Notices

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

LICENSOR:

Chairman cum Managing Director
Ennore Port Limited
23 Rajaji Salai
Chennai 600001

LICENSEE:

Director
Chettinad International Coal Terminal Private Ltd
Rani Seethai Hall, VIth Floor,
603 Anna Salai,
Chennai 600 006

or such other address, telex number or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing to the adoption thereof.

25.9. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and subject to Section 24 above, the Courts at Chennai, Tamil Nadu, India shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement.

25.10. No partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever except as expressly provided in this Agreement. The Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations solely in accordance with the provisions of this Agreement.Original document

This Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

IN WITNESS THEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For and on behalf of
Ennore Port Limited
Authorised Signatory

WITNESS:

1. A. Ramajogapathy, Director (Operations), CPL

2. N. S/o Subramanyan, Plant Head, Chennai.

For and on behalf of
Chettinad International Coal Terminal Private Ltd
Authorised Signatory

WITNESS:

1. (S.P. PALANIAPPAN)

2. SU. ALAGAPPA SUBRAMANIAN.

Appendix 1: Letter Of Intent

Date

Bidding Company/ Authorised Representative - Bidding Consortium

Address

Sub: Letter of Intent - Project to design, engineer, finance, construct, operate, maintain and market and transfer a common user Coal Terminal on Build-Operate-Transfer (B-O-T) basis at Ennore Port, India.

Ref 1. Your response to the RFQ EPL/45-D/2002

2. EPL's letter of qualification dated ----

3. Your Notice of Intent to submit the Detailed Techno-Commercial proposal dated -------

4. Your Detailed Techno-Commercial Proposal submitted alongwith the Covering letter and other enclosures dated ---

Dear ---

With reference to the above, subsequent to the evaluation of the Detailed Techno-Commercial Proposals submitted by Eligible Bidders, Ennore Port Limited is glad to inform you that,

I. Your company/consortium represented by ---- of which --- is the Authorised Signatory is selected as the Preferred Bidder for the development and implementation of the Project referred to above by this Letter of Intent issued on the ---- day of ---- 2004, subject to

II. You are hereby required to furnish the certificate of the incorporation of the Project Company with whom Ennore Port Ltd will be signing the Licence Agreement

III. You are hereby required to, under the terms of the RFP, within 30 days of issue of this Letter of Intent,

a. make payment to EPL, the non refundable and irrecoverable Upfront Development Charge of Rs 400,00,000 (Rupees Four Crore)

b. sign the Licence Agreement

IV. In case you do not comply in full, with the requirements of this Letter of Intent and as specified in II and III above, without prejudice to any of the rights of Ennore Port Ltd under the terms of the tender EPL/45-D/2002,

a. your selection as the Preferred Bidder and as communicated by this letter will stand forthwith cancelled; and

b. this Letter of Intent shall stand forthwith annulled and revoked; and

c. your Proposal Security provided along with your Detailed Technical Proposal shall be forfeited

Kindly return a signed copy of this letter acknowledging your unconditional acceptance of this Letter of Intent and comply with the requirements specified in this Letter of Intent as stipulated above expeditiously.

We wish you all the best for the successful implementation of the project.

Thanking you.

Yours faithfully

Authorised Signatory

Ennore Port Ltd

We confirm our unconditional acceptance of this Letter of Intent and undertake to abide by the terms and conditions outlined herein.

_____

Authorised Signatory

Bidding Company/Bidding Consortium

Date _____

Appendix 2: Certificate Of Incorporation of xxxx (SPV)

Appendix 3: Memorandum of Understanding

Appendix 4: Schedule for Handover of the Licensed Premises

Sr. No.	Part of the Licensed Premises	Description	Date of Handover
First Required Part of the Licensed Premise			
1	Waterfront area for jetty construction		Zero Date
Subsequent Parts of the Licensed Premises			
2.	Dredged Depth alongside berth	-15 m CD	6 Months after receipt of requisition notice from Licensee
3.	Right of way for Conveyor		6 Months from Zero Date
4.	Land for Storage Area		12 Months from Zero Date

Appendix 5: Format for Construction Guarantee

THIS GUARANTEE dated, ____] day o. [[, 2004 ("the Guarantee") is issued by [____], a banking company incorporated under the laws of [__] and having its registered office/ [principal place of business] at [_] (hereinafter referred to as 'the Guarantor' which expression includes its successors and assigns) for the benefit of/ or in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as 'the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as prospective developer in respect of development of a coal terminal;

The Licensor and the Licensee have entered into a Licence Agreement dated [ ] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to construct the Project within 30 months from the Zero Date in accordance with the terms of the Agreement.

Pursuant to Section 7 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper construction of the Project as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of **Rs. 6,00,00,0000 (Indian Rupees Six Crore only)**, upon receipt of the Licensor demand in writing and written statement stating:

a) that the Licensee has failed to fulfil its obligations under the Agreement, and

b) the amount of guarantee to be encashed as per the provisions of the Agreement.

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or not withstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

IV. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of the Agreement the Licensor may invoke the Guarantee, in part or in full,

Chennai 600 006

at any time as it deems fit but not less than monthly intervals and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under the Agreement.

V. In case the Licensor invokes the Guarantee in parts as per the provisions of Article IV of the Guarantee, the Guarantor undertakes to keep the Guarantee valid for the amount equal to **Rs. 6,00,00,000** less invoked amount of the Guarantee.

VI. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time including the time of invoking this Guarantee by the Licensor, or thereafter any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VII. The Guarantor as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right to enquire into the matters referred to in any written demand issued by the Licensor or into the terms of Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VIII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

IX. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and/or the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

X. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

XI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper construction of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee of or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause (viii) would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XII The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XIII. This Guarantee shall remain in full force and effect till the issue of Completion Certificate. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIV This Guarantee shall be valid for an initial period of [one year] and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof]

XV In the event this Guarantee is not renewed in the manner provided in sub-clause XIV above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [ ] day of [ ], 2004.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix 8: Lease Agreement

This Lease Agreement (this "Lease") made at Chennai this, __ the day of _ _, 20_ **BETWEEN ENNORE PORT LIMITED**, a company Companies Act, 1956, hereinafter referred to as "the Lessor" (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the One Part.

AND

M/s. _ _____ _____ a company incorporated and registered under the Companies Act, 1956, hereinafter referred to as "the Lessee" (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns) of the Other Part.

AND WHEREAS, the Lessee has been selected as the Developer to *design, engineer, finance, construct, operate, maintain, market and transfer a common user Coal Terminal on B-O-T basis at Ennore Port* with all backup facilities and equipment as per the provisions under the Licence Agreement entered into between the parties and the Lessor has agreed to grant Licence to the Lessee to do so on the terms and conditions set forth in a Licence Agreement dated [ ] (the "License Agreement");

AND WHEREAS the Lessor and Lessee have agreed to execute this Lease in accordance with the terms of the said License Agreement for the development of the Terminal on the property more fully described in the Schedule hereunder and hereinafter referred to as "Schedule Property"

NOW THIS INDENTURE WITNESSETH as under :

For the purpose of this Lease, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Licence Agreement.

1 Lease of premises

In consideration of the premises aforesaid and of the rent reserved and of the covenants and agreements on the part of the Lessee to be observed and performed, the Lessor doth hereby lease unto the Lessee the Schedule Property together with the right to use the foreshore land and the water front abutting thereto (the Schedule Property, the right to use the foreshore land and water front are hereafter wherever the context so admits collectively referred to as "the Licensed Premises") together with all rights, easements and appurtenants thereto TO HAVE AND TO HOLD the Licensed Premises for a term of commencing **from the __ the day of __ to the – the day of ---** subject to the Lessee paying during the said term unto the Lessor

a) Lease rent computed and escalated as per provisions of Clause 3 in this Lease Agreement equal to the amount of Rs /- (Rupees ----- only).

b) One time, non-refundable payment of Lease premium equivalent to one years lease rent payable on signing of Lease Agreement and equal to the amount of Rs /- (Rupees ----- only)

c) Security deposit held for the term of lease equivalent to one years lease rent, and renewable every five years on revision of Base Lease Rate equal to the amount of Rs /- (Rupees ----- only). The security deposit will be refundable on termination of this Lease Agreement after adjustment of any dues to the Licensee.

2 Base Lease Rate

The Base Lease Rate shall be Rs 30/- per square meter or part thereof per calendar year or part thereof and shall be valid for a period of 5 (five) years

The Base Lease Rate shall be revised at the end of 5 years for the following five year period, based on commercial principles as adopted by the Lessor

3 Revision of Rent

The Lease rent shall be computed as a product of the Lease rate as described in this section and the total land area leased as per this Lease Agreement

The Lease rate for the first year shall be equal to the Base Lease Rate. The Lease rate for the year immediately following revision of the Base Lease Rate, shall be equal to such revised Base Lease Rate. The Lease rate for all interim years between the years of revision of Base Lease Rate shall be calculated based on a 5% increase on the previous years rate and shall be computed as;

Lease rate for following year = Lease rate for previous year X 1.05

4 Time for payment of rent

The rent reserved hereunder shall be payable by the Lessee at monthly intervals in advance for the following month as per the provisions of Section 14 of the Licence Agreement. Any sum due under this Lease whether from the Lessee or sub-lessee or Licensee shall be recoverable as arrears of land revenue without prejudice to the rights and powers of the Lessor under this Lease, the Licence Agreement or any other law for the time being in force

5 Use of leased premises

The Lessee shall utilise the leased premises, viz..the Schedule property and the foreshore land and the water front abutting thereto for the purposes of developing, constructing operating and maintaining the Terminal, for related and incidental activities and providing services to the users in accordance with the terms of the Licence Agreement.

6 Scope of Operations

The Lessee understands and agrees that this Lease of Schedule property is granted for the exclusive purpose to design, construct, own, operate, maintain, lease, assign, insure, finance, manage, market and develop the Terminal, and take action in accordance with the Licence Agreement with respect to all or any matters concerning the Terminal. Lessee shall not use the Schedule property or Licensed premises for any other purpose.

7 Right to sub-lease, subcontract etc.

The Lessee shall subject to the prior approval of the Lessor be entitled to assign, sub-lease, sublet, license or grant rights in the leased premises for all or any of the purposes set out herein granting the same or limited powers herein contained and in accordance with the Licence Agreement, and such person shall be bound by the terms herein to the extent the same relate to such transfer, assignment etc. The Lessee shall in all such cases ensure that the assignment etc. shall not extend beyond the period herein contained and shall be subject to the terms hereof provided however the Lessee shall within 60 days of every assignment or assurance duly registered under the Indian Registration Act inform the Lessor of every such transfer, assignment sub-lease, under-letting or license, as the case may be.

8 Sub-Contracts

8.1 The Lessee may enter into one or more agreement or arrangement for assignment, sub-lease, sub-letting, licensing, construction, operation and maintenance contracts with such person and persons and upon such terms and conditions as the Lessee deems fit, with the prior approval of the Lessor. PROVIDED HOWEVER all such agreements shall be subject to the terms hereof and the Licence Agreement and for a duration equal to or shorter than period herein and the Licence period provided therein. Without prejudice to the aforesaid the Lessee shall be obliged to perform obligations hereunder

and shall be liable for the breach thereof whether committed by the Lessee or such other party under one or more of the contracts/arrangements aforesaid.

8.2 The Lessee and all persons acting under it shall conform to all parameters of environment, safety and technical sufficiency in discharging its rights and obligations.

8.3 It is further agreed that in the event of the Lessee granting any sub-lease(s), license or other rights to any person for the making, erecting or filing of any wharf, dock, quay, stage, jetty, pier, erection, mooring or reclamation of the leased premises within the port area, and operating any facility constructed by the Lessee or its contractors, the Lessee shall be at liberty to charge and collect such fees and amounts from time to time and upon such term and conditions as the Lessee deems fit, but not exceeding the amounts due and payable by the Lessee to the Lessor under the terms of this Lease agreement.

9 Development of Leased Premises

Subject to the terms of the Licence Agreement, the Lessee shall be at liberty to construct, erect, renovate, repair, alter, pull down or otherwise deal with the leased premises and any structure or structures standing thereon or to be constructed hereafter and the works carried out therein and shall carry out any modifications thereto as it deems fit and shall keep the works and structures constructed or standing for the time being on the leased premises or any part or portion in good and tenantable repair and condition and the Lessee shall insure the same in such sum and against such risk as the Lessee deems fit.

10 Restrictions on Use of Land

The Lessee shall use the land leased only for the purposes of the Project. Any breach of this condition will be sufficient cause for the Lessor to terminate this lease.

11 Enjoyment of Leased Premises

The Lessor doth hereby covenant with the Lessee that upon the Lessee paying the rent hereby reserved and performing the covenants herein and the Licence Agreement, on the part of the Lessee to be observed and performed, the Lessee shall peaceably and quietly enjoy the leased premises for the said term hereby granted and its extensions as herein provided without any let, interruption or disturbance of from or by the Lessor or any person or persons lawfully or equitably claiming by, from or in trust for the Lessor.

12 Resumption of Leased Premises

The Lessor shall have the right to resume the leased property at any time before the expiry of the lease period if required by the Government in the national interest and/or by the port for its own use with six months notice on payment of compensation if any in accordance with the formulations as may be approved by the Government. Provided however that if the lease is terminated or cancelled for not complying with the conditions of the lease, no compensation whatsoever shall be payable by the Lessor.

13 Creation of mortgage and other charge(s)

The Lessee and every sub-lessee, assignee, licensee or other person to whom any right to the leased premises or any part or portion thereof is granted by the Lessee, shall be entitled with prior permission of the Lessor, to create a mortgage or charge over the leased premises or any part or portion thereof or assign/ encumber the same, in accordance with the terms of the Licence Agreement, to secure any amounts due and payable by it to any banking company or a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a co-operative bank as defined in clause (b) (**) of section 2 of the Reserve Bank of India Act, 1934 or a finance company or public financial institution which may be notified by the Central

Government in this behalf in consultation with the Reserve Bank of India or any other Lender in India or abroad. Provided however all such mortgages, charges or encumbrances shall be subject to the rights of the Lessor under the Lease and the terms of the Licence Agreement and any modification or amendment thereof for the time being in force. The Lessor agrees that the Lender shall, subject to the approval of the Lessor and the terms of the Licence Agreement, be entitled to sell, convey or transfer the leasehold rights so charged

14 Payment of other taxes, charges etc.

14.1 The Lessee shall pay all taxes, licence and other charges, dues, assessments, levies or outgoings payable in respect of the leased premises or the structures to be constructed thereon or in respect of the materials stored therein, which may be levied by any Government, local authority or other persons.

14.2 The Lessee shall fully indemnify the Lessor of all liabilities in this regard

15 Compliance of Laws

The Lessee shall not do or permit to be done on the leased premises or the structures to be put thereon which may be contrary to any law or legislation, central, state or local for the time being in force.

16 Insurance

The Lessee shall insure in accordance with the terms of the Licence Agreement, the Terminal, the facilities and infrastructure to be provided therein in such sum and against such risks as the same are capable of being insured with the name of the Lessee or such other person as the Lessee desires as the loss payee.

17 Power to inspect

The Lessee shall permit the Lessor and its duly authorised representative to enter upon the leased premises and the works or structures for the time being constructed or standing thereon to view and inspect the same and if any defect is found and brought to the notice of the Lessee in writing to remedy or make good the defect within such reasonable time as may be specified by the Lessor.

18 Restriction of grant of right in the Coal Terminal to others

Subject to the terms of the Licence Agreement, the Lessor shall not during the subsistence of this Lease grant to any person any permission within the area of the Terminal to make, erect or fix any wharf, dock, quay, berth, stage, jetty, pier, place of exchange, erection of mooring or undertaking any reclamation of foreshore land without the previous permission in writing of the Lessee and every such grant shall be subject to payment by such private operator of such fees as may be determined by the Lessee in that behalf, except those already permitted before the execution of the Licence Agreement.

19 Termination

This Lease shall always be coterminous with the Licence Agreement and shall be automatically terminated in case of termination/expiry of the Licence Agreement. Lessee agrees that any notice or communication for termination of the Licence Agreement shall also be treated and/or deemed as notice for termination of this Lease and Lessee shall not insist on a separate notice for termination of this Lease and Lessee hereby waives all rights to a separate notice.

20 Disputes

If any dispute or difference of any kind whatsoever (a "Dispute") shall arise between the parties, the dispute resolution mechanism (Section 24) in the Licence Agreement shall apply.

21 Payment of Stamp Duty

Subject to what is stated herein, all costs, charges and expenses that are incidental to this Deed including the stamp duty and registration charges thereof shall be borne and paid by the Lessee alone.

22 Notice

Any notice or other communication to be given hereunder shall be in writing and shall be sufficiently given if delivered by registered mail or hand-delivered against written receipt or if transmitted and clearly received by facsimile transmission addressed as follows:

(a) In the case of Lessor to:
Chairman and Managing Director
Ennore Port Limited
23 Rajaji Salai
Chennai 600001

(b) In the case of Lessee to:
Managing Director
Chettinad International Coal Terminal Private Ltd
Rani Seethai Hall, VI: Floor,
603 Anna Salai,
Chennai 600 006

Attention: Mr. _____
Telephone No.: _____
Fax No. : _____

or sent to such other person by registered mail, courier, or hand-delivery to such other address in India as either Party may designate for itself by notice given in accordance with this clause. Any such notice shall be deemed to have been received on the date of delivery.

23 Jurisdiction

The Courts at Chennai, Tamil Nadu, India shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement.

24 Acceptance

This Agreement is made in three original copies, each having the same contents and the parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written

_____ _____

For and on behalf of the Ennore Port Limited

By Authorised Signatory





WITNESS:

1

2.

For and on behalf of

Chettinad International Coal Terminal Private Ltd

Authorised Signatory.

WITNESS:

1.

2

Schedule to Lease Agreement: DESCRIPTION OF SCHEDULE PROPERTY

Sr No.	Total Area in Hect.	Survey no. of Land	Boundaries	Name of village

Appendix 9: Format for Maintenance Guarantee

THIS GUARANTEE dated, [___] day of [___], yyyy ("the Guarantee") is issued by [ ], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [_ _] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____ , hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of development of a coal terminal;

The Licensor and the Licensee have entered into a Licence Agreement dated [___] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has designed, constructed, engineered, financed, operated, maintained the Terminal in accordance with the terms of the Agreement and will continue operation and maintenance of the Terminal as per the provisions of the Agreement till the Scheduled Date of Transfer.

Pursuant to Section 15.2.14 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper maintenance of the Project and other obligations under the Agreement as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of Rs. _____ (Indian Rupees_____) estimated as per the provisions Section 15.2.14 of the Agreement, upon receipt of the Licensor demand in writing and written statement stating that the Licensee has failed to fulfil its obligations as per the provisions of Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement.

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or notwithstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.





IV. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement, of the Agreement the Licensor may invoke the Guarantee, in part or in full, at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantor at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under Section 11.2.2 and/or Section 15.2.13 and/or Section 19.3.6 IV of the Agreement

V. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VI. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation

VII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VIII. Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

IX. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of, taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

X The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper maintenance of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement,

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect thereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XI. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XII. This Guarantee shall remain in full force and effect upto a time of 1 (one) year after the Scheduled Date of Transfer (Date to be inserted on signing of Agreement) as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIII. This Guarantee shall be valid for an initial period of [one year] and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof] until [1 (one) year after the Scheduled Date of Transfer].

XIV. In the event this Guarantee is not renewed in the manner provided in sub-clause XIII above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [ ] day of [ ], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix 10: Format for Payment Guarantee

THIS GUARANTEE dated. [___] day of [___], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____ __, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of development of a coal Terminal;

The Licensor and the Licensee have entered into a Licence Agreement dated [ ] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to develop the Project in accordance with the terms of the Agreement.

Pursuant to Section 14 .1 of the Agreement, the Licensee has undertaken to furnish to the Licensor a bank guarantee as security for

(i) timely Revenue Share payments the Licensor as per the provisions of the Agreement, and/or

(ii) timely payments of any other dues payable to the Licensor as per the provisions of the Agreement; and/or

(iii) timely payments of any claims by the Licensor on the Licensee; and/or

(iv) recovery by Licensor of any and all amounts payable and due to the Licensor from the Licensee as per the provisions of the Agreement; and/or

(v) as security for performance of any and all obligations under this Agreement.

The Licensee has accordingly directed the Guarantor to issue this Irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereinafter.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums as so notified by the Licensor, not exceeding in total the amount of Rs. _ _____ (Indian Rupees ___) estimated as per the provisions of the Agreement, upon receipt of the Licensors demand in writing and written statement stating any of the following:

a) that the Licensee has failed to pay the Revenue Share and other payments in accordance with Section 14 of the Agreement;

b) that the Licensee has failed to meet its obligations under Section 15.2.13 and/or Section 19.3.6 IV of the Agreement;

c) that the Licensee has failed to pay/reimburse any payments/compensation/claims for damages, due to the Licensor in accordance with any of the Sections under this Agreement,

d) the Licensor has issued a Transfer Information Notice

III. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

IV The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

V. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

VII. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

VIII. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely payments of Revenue Share and/or any other payments and/or any other claims due to the Licensor as per the provisions of the Agreement and/or performance of the Licensees obligations under Section 15.2.13 and/or Section 19.3.6 IV of the Agreement.,

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

(j) shall not be affected by any failure, omission or delay on the Licensee's part to exercise, assert or to exercise any right, power or remedy conferred on the Licensor or this Guarantor,

(k) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part

IX. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

X. This Guarantee shall remain in full force and effect during the Commercial Operations of the Project as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XI. This Guarantee shall be valid for an initial period of [six months] and shall be renewed 30 days prior to the expiry of any one six month term, for additional terms of [six months each or part thereof].

XII. In the event this Guarantee is not renewed in the manner provided in sub-clause XI above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix [f: Minimum Annual Guaranteed Revenues

Period (starting from Date of Commercial Operation or the day the Licencee first provides cargo handling services to users of the Terminal, whichever is earlier)	Rs Crore
For year 1 of Commercial Operations	5.0
For year 2 of Commercial Operations	5.3
For year 3 of Commercial Operations	5.5
For year 4 of Commercial Operations	5.8
For year 5 of Commercial Operations	6.1
For year 6 of Commercial Operations	6.4
For year 7 of Commercial Operations	6.7
For year 8 of Commercial Operations	7.0
For year 9 of Commercial Operations	7.4
For year 10 of Commercial Operations	7.8
For year 11 of Commercial Operations	8.2
For year 12 of Commercial Operations	8.6
For year 13 of Commercial Operations	9.0
For year 14 of Commercial Operations	9.4
For year 15 of Commercial Operations	9.9
For year 16 of Commercial Operations	10.4
For year 17 of Commercial Operations	10.9
For year 18 of Commercial Operations	11.5
For year 19 of Commercial Operations	12.0
For year 20 of Commercial Operations	12.6
For year 21 of Commercial Operations	13.3
For year 22 of Commercial Operations	13.9
For year 23 of Commercial Operations	14.6
For year 24 of Commercial Operations	15.4
For year 25 of Commercial Operations	16.1
For year 26 of Commercial Operations	16.9
For year 27 of Commercial Operations	17.8
For year 28 of Commercial Operations	18.7
For year 29 of Commercial Operations	19.6
For year 30 of Commercial Operations	20.6

The years of Commercial Operations indicated above will be limited by the License Period and the last year of Commercial Operation for calculation of the Minimum Annual Guaranteed Revenues shall always be the terminal year of the License Period





Appendix 12: Licensed Premises

Ennore Port Limited
(A Government of India Undertaking)
एन्नूर पोर्ट लिमिटेड

Regd. & Corporate Office
P.T. Lee Chengalvaraya Naicker Maaligai,
23, Rajaji Salai, Chennai - 600 001.

EPL/45-D/2002
Dated: 9th July 2006

Mr. S.P. Palaniappan
Whole Time Director
South India Corporation Limited
Rani Seethai Hall 6th Floor
603, Anna Salai
Chennai-600 006.

Subject: **Letter of Intent - Project to design, engineer, finance, procure, construct, operate, maintain and market and transfer a common user Coal Terminal on Build-Operate-Transfer (B-O-T) basis at Ennore Port, India.**

Reference:
1. **Your response to the RFQ EPL/45-D/2002**
2. **EPL's letter of qualification dated 18.11.05**
3. **EPL's letter for resuming Bid Process dated 18.11.05**
4. **EPL's letter dated 24.11.05**
5. **Your Detailed Techno-Commercial Proposal submitted along with the Covering letter and other enclosures opened on 06.01.06.**
6. **EPL/OP/5.6/87 dated 27.05.2006**
7. **Your letter dated 30.05.2006**
8. **Your letter dated 21.06.2006**

Dear Sir,

With reference to the above, subsequent to the evaluation of the Detailed Techno-Commercial Proposals submitted by Eligible Bidders, Ennore Port Limited is glad to inform you that,

i. Your company/consortium represented by **South India Corporation Limited, Portia Management Services Limited and Navayuga Engineering Limited** of which **Mr. S.P. Palaniappan, Whole Time Director,** is the Authorized Signatory is selected as the Preferred Bidder for the development and implementation of the Project referred to above by this Letter of Intent issued on the 9th day of July 2006, subject to

ii. You are hereby required to furnish the certificates of the incorporation of the Project Company, along with the constitution documents and the appropriate authorizations for the Project Company for execution of the Licence Agreement.

iii. You are hereby required to, under the terms of the RFP,

a) deliver the Performance Guarantee from a scheduled commercial bank acceptable to us within 30 days of issue of LOI

b) make payment to EPL, within 45 days of issue of LOI, the non-refundable and irrecoverable Upfront Development Charge of Rs.4,00,00,000 (Rupees Four Crores Only).

c) enable and cause the Project Company to sign the Licence Agreement within 45 days of issue of LOI

IV. The Consortium Member as defined in the RFP shall remain jointly and severally liable to execute the project as represented and undertaken by them in their response to the RFQ.

V You are herby informed that the Government would separately examine the desirability of appointing a regulatory authority or appointing a person whose approval would have to be taken in the matters of tariff determination under clause 13 II of the proposed license agreement and such decision of the Government is binding on License.

VI The following would be applicable and shall be incorporated in the License Agreement suitably.

(1) The exclusivity period shall be reduced to 5 years instead of 10 years, without any other condition as you have already confirmed vide letter in Reference 8.

(2) For avoidance of doubt, it is clarified that the liability of EPL in case of early termination of the License Agreement shall be on the basis of Project Cost that shall be the lowest of the following:

a. Cost of project as per the Financing Document approved by EPL

b. Completion cost of the project certified by Statutory Auditors

c. Aggregate fair value, as determined by an expert being a reputed valuer.

Further, the Project cost arrived at as above shall be subject to a ceiling of Rs. 311.237 crores and funding pattern indicated by you in Section XII and XIV respectively of the Detailed Technical Proposal submitted by you.

VII. In case you do not comply in full, with all the requirements of this Letter of Intent without prejudice to any of the rights of Ennore Port Limited and unless otherwise agreed to by EPL, under the terms of the tender EPL/45-D/2002,

ENNORE PORT LIMITED

Chennai International Coal Terminal Pvt. Ltd. Chennai 600 008

a) your selection as the Preferred Bidder and as communicated by this letter will stand forthwith canceled; and

b) this Letter of Intent shall stand forthwith annulled and revoked; and

c) Your Proposal Security provided along with your Detailed Technical Proposal shall be forfeited

Kindly return a signed copy of this letter acknowledging your unconditional acceptance of this Letter of Intent and comply with the requirements specified in the Letter of Intent as stipulated above expeditiously

We wish you all the best for the successful implementation of the project.

Thanking you,

Yours faithfully,

Chairman cum Managing Director
Ennore Port Limited

We confirm our unconditional acceptance of this Letter of Intent and undertake to abide by the terms and conditions outlined herein.

Authorized Signatory
Bidding Company/Bidding Consortium
Date:

We confirm our unconditional acceptance of this letter of Intent and as enclosed in Annexure of the terms of the Your letter dated 7th August 2008 and undertake to abide by the terms and conditions enclosed therein

For SOUTH INDIA CORPORATION LTD.

Wholetime Director

ENNORE PORT LIMITED

Chennai 600 008

SOUTH INDIA CORPORATION LIMITED

Admn. Office : 'Rani Seethai Hall' 6th Floor, 603, Anna Salai, Chennai - 600 006. INDIA

Phone : 28256001, 28295152, 42058911/22/33, Grams : SOUTHTRANS Fax : 044-28295121 E-mail : sicltrans@vsnl.net
TNGST:RC No.112/21400**, CST:RC No.112/573413 KGST:No.240/10/232, APGST.No.VSP/03/4/2549
Regd. Office : Rani Seethai Hall 5th Floor, 603 Anna Salai, Chennai - 600006. Phone : 28282188, 28281585. Website : www.chettinad.com

The Chairman cum Managing Director,
Ennore Port Limited,
P.T.Lee.Chengalvaraya Naicker Maaligai,
23, Rajaji Salai
Chennai - 600 001.

Dear Sir,

Sub: Development of Coal Terminal at Ennore Port on BOT basis - Fixing up of cap for Capital Cost.

Ref: 1. Our response to the RFQ EPL / 45-D / 2002
2. Your letter of qualification, dated 18.11.05
3. Your letter of resuming Bid process, dated 18.11.05
4. Your letter, dated 24.11.05
5. Our Detailed Techno-Commercial Proposal submitted along with the Covering letter and other enclosures opened on 6.1.06
6. Your Letter No.: EPL / OP / 5.6 / 87 Dated: 27.5.06
7. Our letter, dated 30.5.06
8. Our letter, dated 21.6.06
9. Your LOI No.: EPL / 45-D / 2002, Dated: 9th July 2006
10. Our letter dated 13.7.06
11. Your letter No.EPL/OP/5.6/102 Dated 18.7.06

With reference to the above subject and exchange of various messages and discussion had with you in the above subject in your office To - day (19.07.06), we bring to your kind notice the following:

The project cost mentioned in our detailed Technical Proposal in the offer Dated: 6th January 2006 is only a tentative figure and approximate cost. It is not a final project cost. Even in the tender schedule also you have not emphasized anything about fixing up of the ceiling for the capital cost. This is only post tender subject. The final project cost will be known only after the completion of D.P.R.

You know very well that after quoting our tender the main Raw materials such as, Steel, Cement and Aggregate have increased abnormally and even the interest rate and Exchange rate also increased considerably, all these aspects will escalate the tentative project cost abnormally. The approximate variation that has taken place in various input costs are as follows.

S. No.	Description	Rate at the time of quoting Tender	Present Rate	Percentage of Variation
1.	Cement	Rs. 120/- per bag	Rs. 185/- per bag	55%
2.	Structural Steel (Avg. Rate)	Rs. 34000/- PMT	Rs. 40000/- PMT	18 %
3	Aggregate	Rs. 18/- per CFT	Rs. 30/- per CFT	67 %
4.	Interest Rate	9 % p.a.	11 % p.a.	25 %
5.	Exchange rate	Rs. 44/- per USD	Rs. 46/- per USD	5 %

If you see the above statement all the major main items are increased abnormally by more than 50%. This is the present situation, we do not know what is the impact of these items during our construction period of 30 months.

In our present case still the detailed project report is not prepared and Bill of quantity were not arrived so far. It is a common thing in any project, the project cost may escalate about 20 to 25 % from the rough estimated value. Depending upon nature of project, site and local condition.

In the recent market condition to construct a berth equal to international standard, eco-friendly and with modern technical facilities, having a capacity of 8 million tones per annum and handling Panamax / Cap size vessel, the project cost will come roughly about Rs. 400 Crores. It is not at all possible to reduce cost. If you want to reduce the cost then we have to forego some of the standards.

The final design for the berth and equipment were not finalized and bill of quantities were are not arrived so far, it will be done only after completion of D.P.R and freezing the design for the project, then only we will know the Project Cost.

In Light of the facts mentioned above, we kindly request you to increase the tentative project cost mentioned in our detailed Technical Proposal in the offer Dated: 6th January 2006 from Rs.311.237 Crores to 359.035 Crores as per our revised Project Cost enclosed here with. We are planning to create the entire facility in the first phase itself. Hence, we are planning to invest the entire cost in the 1st phase itself.

We also kindly request you to allow time to submit the B.G for performance guaranty and the payment upfront fee and execution of license agreement from the date of receipt of amended LOI instead of original LOI date.

Under the circumstances explained above, we request you to fix the ceiling for the capital cost as Rs. 359.335 Crores and this will apply only incase of any Mid Course termination of the project. We also request you to allow time to submit B.G, Up front fee and execution of agreement as prayed above.

Thanking you,

Yours Faithfully,
For South India Corporation Limited

Whole Time Director

CC: The Director, (Operations)

ENNORE PORT LIMITED

Chennai International Coal Terminal Pvt. Ltd. Chennai 600 006

RECEIVED PROJECT COST

Sl.No	Item Description	Unit	Qty.	Rate / Unit	Total Cost	Rs in Million
A	Civil Works					
1	Area Development		Details Provided		95,750,000	95.75
2	Berths		Details Provided		615,417,595	615.42
3	Conveyor Corridor		Details Provided		17,150,500	17.15
4	Ground improvement and Land Fill		Details Provided		9,435,000	9.44
5	Others (if any)		Details Provided		700000	0.70
	Total of Civil Works					738.45
B	Utility & Miscellaneous Works					
1	Utility Buildings		Details Provided		4,900,000	4.90
2	Road Works		Details Provided		65,000,000	65.00
3	Water Supply & distribution system		Details Provided		600000	0.60
4	Fire Fighting facilities		Details Provided		3,500,000	3.50
5	Maintenance workshop with equipment		Details Provided		10,787,000	10.79
6	Miscellaneous works		Details Provided		7,400,000	7.40
	Total of Utilities and Miscellaneous Works					92.19

for SOUTH INDIA CORPORATION LTD.

Wholetime Director

ENNORE PORT LIMITED

Chennai International Coal Terminal Pvt. Ltd. Chennai 600 006

	Mechanical Works				
	Handling Equipments		Details Provided	1,996,800,000	1996.80
D	Electrical Works		Details Provided	125,156,000	125.16
E	Environment protection and pollution control measures		Details Provided	5,200,000	5.20
F	Contingencies			192,256,746	19...7
G	Engineering, Project Management, Administrative, Pre Operative Expenses			193,298,650	193.30
H	Interest During Construction		Details Provided	250,000,000	250.00
	Grand Total				3503.35

for SOUTH INDIA CORPORATION LTD

Wholetime Director

ENNORE PORT LIMITED

Chennai International Coal Terminal Pvt. Ltd.

एण्णूर पोर्ट लिमिटेड

Ennore Port Limited

(A GOVERNMENT OF INDIA UNDERTAKING)

Phone : 044-2498 3051 / 52
Fax : 044-24662077
E-mail : info@ennoreportltd.com
Website : www.ennoreportltd.com

Registered Office :
15, Kasturiranga[illegible]
Ahitanagar, [illegible]
Alwarpet, Chennai [illegible]

EPL / OP / 5.6 / 004
Dated: 07th August 2006

Date .....

Shri S.P. Palaniappan,
Whole Time Director,
South India Corporation (Infra) Ltd
Rani Seethai Hall, 6th Floor
603, Anna Salai,
Chennai – 600 006

Fax No.2829 5821

Dear Sir,

Subject: Development of Coal Terminal at Ennore Port on BOT basis. Tender No. 45-D/2002. Amendment to LOI dated 9th July 2006.

Please refer your letter dated 19th July 2006.

EPL has examined your request with reference to fixing a ceiling of the Capital Cost. A ceiling of Rs.350 crores has been fixed. Accordingly the ceiling referred in Clause (2) item VI of the Letter of Intent (LoI) dated 9th July 2006 may be read as "Rs.350 crores instead of Rs.311.237 crores"

Further with reference to item II of the LOI dated 9th July 2006, the certificate of incorporation of the Project Company, along with the constitution document and the appropriate authorizations for the Project Company for execution of License Agreement should be submitted within 30 days from the date of issue of this letter.

EPL also accepts your request for additional time and accordingly the due dates for meeting the obligations under item III of the LOI dated 9th July 2006 will be reckoned from the date of issue of this letter.

This is issued without prejudice to any of the rights of Ennore Port Limited under the terms of the Tender No. 45-D/2002.

Yours faithfully,

(S. Velumani)
Chairman cum Managing Director

7.8.06

SOUTH INDIA CORPORATION LIMITED

Admn. Office : 'Rani Seethai Hall' 6th Floor, 603, Anna Salai, Chennai - 600 006. INDIA
Phone: 28295031, 28295152, 52009911/22/33, Grams: SOUTHTRANS Fax : 044-28295121 E-mail:sicltrans@vsnl.net
TNGST.RC No 112/2140011, CST:RC No.112/573413 KGST-No.240/10/232. APGST:No.VSP/CO4/2542
Regd. Office: Rani Seethai Hall 6th Floor,603,Anna Salai,Chennai-600 006 Phone:28292108,28291586 Website:www.sicltrans.com

August 7, 2006

The Chairman cum Managing Director,
Ennore Port Limited,
P.T. Lee Chengalvaraya Naicker Maaligai,
23, Rajaji Salai,
Chennai - 600 001

Dear Sir,

Sub: Development of Coal Terminal at Ennore Port Trust on BOT basis

Ref:
1. Our response to the RFQ EPL / 45-D / 2002
2. Your letter of qualification, dated 18.11.05
3. Your letter of resuming Bid process, dated 18.11.05
4. Your letter, dated 24.12.05
5. Our Detailed Techno Commercial Proposal submitted along with the Covering letter and other enclosures opened on 6.1.06
6. Your Letter No.: EPL / OP / 5.6 / 87 Dated: 27.5.06
7. Our letter, dated 30.5.06
8. Our letter, dated 21.6.06
9. Your LOI No.: EPL / 45-D / 2002, Dated: 9th July 2006
10. Our letter dated 13.7.06
11. Your letter No.EPL/OP/5.6/002 Dated 18.7.06
12. Our Letter Dated: 19th July 2006
13. Your letter no EPL/OP/5.6/004 dt. 7th Aug 2006

We acknowledge the receipt of the letter cited 13th above, regarding increase in ceiling for the capital cost to Rs. 350 Crores from 311.237 Crores and thanking you for the same

As per the original LOI we are furnishing the following documents:

- We have formed an SPV company by name M/s. Chettinad International Coal Terminal Private Limited by all the three consortium member. The certificate of incorporation for that company issued by Registrar of companies is enclosed. We request you to execute the License Agreement in that company. Hereafter, you can communicate all the correspondence to that company.

ENNORE PORT LIMITED

Chennai 600 006

SCL TRANSPORT

- We have enclosed a Performance Guarantee No.: 0702406184959 Dt.: 07-08-06 issued by State Bank of India, for Rs. 6 Crores drawn in your favour as mentioned in LOI.

The other formality required in LOI will be completed in due course

Thanking you,

Yours Faithfully,
For SOUTH INDIA CORPORATION LTD.,

Director.

ENNORE PORT LIMITED

International Coal Terminal Pvt. Ltd. Chennai 600 006

Company Number:
U60100TN2006PTC059150

FRESH CERTIFICATE OF INCORPORATION CONSEQUENT ON CHANGE OF NAME

In the Office of the Registrar of Companies, Tamil Nadu, Chennai-6
(Under the Companies Act, 1956 (1 of 1956))

IN THE MATTER OF CHETTINAD COAL TERMINAL PRIVATE LIMITED

I hereby certify that CHETTINAD COAL TERMINAL PRIVATE LIMITED

which was originally incorporated on TENTH day of MARCH 2006

under the Companies Act, 1956/1913 and under the name

**********CHETTINAD COAL TERMINAL PRIVATE LIMITED**********

having duly passed the necessary resolution on 07.06.2006, in terms of Section 21/23(1)(a)/22/23(1)(b)/44/43A(4)/31 of the Companies Act, 1956 and the approval of the Central Government signified in writing having been accorded thereto by the Ministry of Finance, Department of Company Affairs, Registrar of Companies, Chennai,

Letter No. 59150.21/2006 Dated 04.07.2006

the name of the said company is this day changed to

CHETTINAD INTERNATIONAL COAL TERMINAL PRIVATE LIMITED

and this Certificate is issued pursuant to Section 23(1)/44/43A(4)/31 of the said Act.

Given under my hand at CHENNAI this FOURTH Day of JULY

Two thousand SIX THIRTEENTH ASADHA

One thousand nine hundred and TWENTY EIGHTH (Saka)

(C.V. UNNIKRISHNAN)
ASST. Registrar of Companies
Tamil Nadu, Chennai

Here give the name of the company as existing prior to the Change.
Here give the name of the Act(s) under which the company was originally registered and incorporated





CERTIFICATE OF INCORPORATION

C.N.... U63090TN2006PTC059150

I hereby certify that CHETTINAD COAL TERMINAL PRIVATE LIMITED

is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the Company is Limited

Given under my hand at CHENNAI

this TENTH day of MARCH

Two thousand six

One thousand nine hundred and TWENTY SEVEN (Saka)

(R. V. UNNIKRISHNAN)
Asst. Registrar of Companies
TAMIL NADU

ENNORE PORT LIMITED

Chettinad International Coal Terminal Pvt. Ltd. Chennai 600 008

50 Rs.

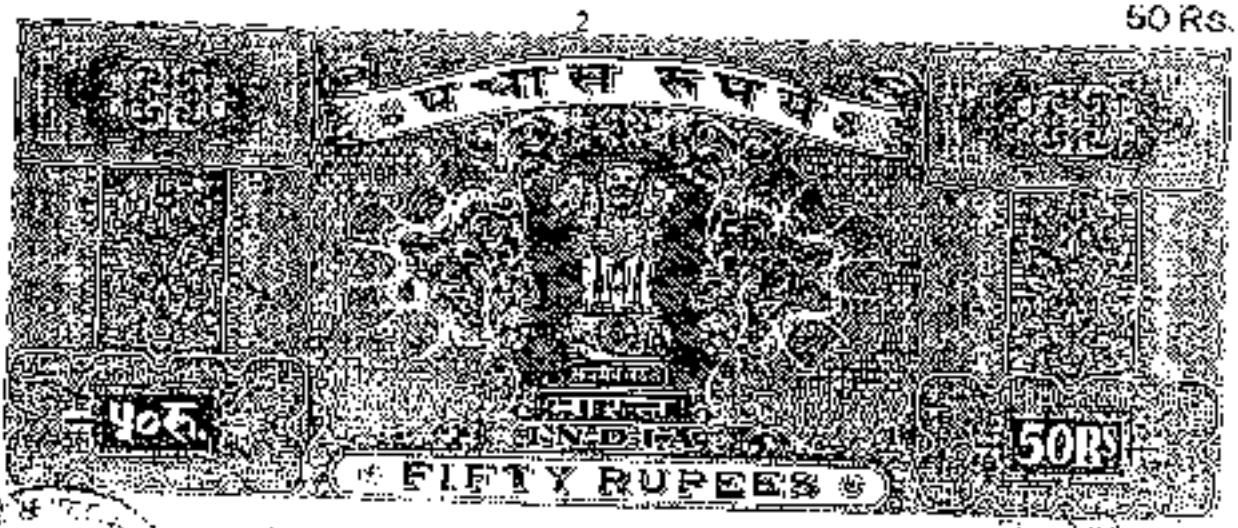


T. SARASWATHI,
Licensed Stamp Vendor, 1st Line,
KALAKSHETRA GARDEN, CHENNAI-90

Memorandum of Understanding among Consortium Members.

This Memorandum of agreement is entered into on this 13th day of December 2002 between **South India Corporation Limited,** a public limited company having registered office at Rani Seethai Hall, No.603, Anna Salai, Chennai.600006 represented by its Director **(hereinafter referred to as Lead Consortium Member or 'LCM')** and **M/s. Portia Management Services Limited**, Maritime Centre, Port of Liverpool L 21 1 LA U.K. represented by its Managing director **(hereinafter referred to as the Party of the second part or PMSL)** and **M/s. Navayuga Engineering Company Limited,** having office at Dwaraka Nagar, Vishakapattinam 530 016 represented by Resident Director **(hereinafter referred to as the Party of the Third Part (NEC)**

WHEREAS M/s. Ennore Port Limited (EPL) a Government of India undertaking has issued a request for Qualification for selection of a Developer for design, engineer, finance, construct, operate and maintain and market a Common User Coal Terminal on B.O.T. basis at Ennore Port Limited.



WHEREAS EPL has invited application from interested parties in accordance with the request for qualification Document (RFQ) in order to short list competent applicants who can subsequently bid for the project.

WHEREAS on a perusal of the RFQ document procured by LCM and after holding discussions, it has been decided that RFQ would be submitted in order to be short listed for bidding for the project by entering into an M.O.U between the parties to this agreement in view of the expertise of each of the parties to this agreement in their specified areas.

WHEREAS the RFQ document issued by EPL has set out certain criteria for evaluation and has also permitted submission of RFQ by bidding consortium in respect of each RFQ document vide Exhibit 1, has set out the principles of the M.O.U. that is to be executed between the members of the consortium and the essential terms that are to contain therein.

WHEREAS the parties to this M.O.U. are desirous of setting out the terms of the agreement between themselves in accordance with the said requirements

Now this **MEMORANDUM OF UNDERSTANDING WITNESSETH** follows:

I. TERM:

1 This MOU shall be valid for a period of 24 months from the last date for submission of the RFQ.

2. The parties agree that on request from EPL, the parties shall extend the validity period of the MOU on the original terms with such amendment as may be permitted by mutual agreement.

II. SCOPE:

a) This MOU is being entered into for the singular purpose of submission of RFQ document and is restricted to the project subject matter of RFQ No.EPL/45-D/2002 issued by EPL.

b) Upon confirmation of RFQ the consortium by EPL a joint collaboration agreement can be entered with well in time to enable the joint venture partner to submit the RFP.

c) Upon Selection/ Award of Contract by EPL, a SPV company shall be incorporated along with the execution of Shareholders Agreement including JDA.

III. LEAD CONSORTIUM MEMBER:

The parties to this agreement agree that SICL is the designated Lead Consortium Member as defined in the RFQ and shall be vested with the prime responsibility of developing the project.

IV. EQUITY DISTRIBUTION:

Equity contribution in the Special Purpose Vehicle Company whose formation shall be as mutually agreed to between the parties to this agreement may be in the following percentage, subject to individual Board's approvals.

SICL 36% PMSL 32% NEC 32%

V. RESPONSIBILITIES OF THE PARTIES:

a. SICL, the designated LCM, is vested with the prime responsibility of developing the project. LCM in addition to the responsibilities that it will undertake shall have specific responsibility for the following

- Tying up the finances for the Project
- Ensuring the equity contribution by each of the Consortium Members.
- Undertaking primary responsibility for liaising with the lending institutions and mobilizing debt resources for the Project
- Ensuring the individual and collective commitment of each of the Consortium Members in honoring the Bidders obligations towards the client. The Lead Consortium Member would be overall responsible for the execution of the Project.

In addition to the above LCM shall be responsible for the following

a. Arrangement for Equipment supply, Maintenance, installation of electrical and mechanical equipment's and other accessories.

b. PCML party of the second part shall have the following responsibility.

1. Terminal operations
2. Implementation of modern management systems
3. Provision of other management services

c. NCC, party of the third part shall have the following responsibility.

1. Arrangement for Berth Construction, Site Development and maintenance the civil structure etc.

In respect of all other responsibilitres, it shall be done by the LCM or at its discretion by any of the parties.

VI. JOINT AND SEVERAL LIABILITY:

It is expressly agreed to between the parties that notwithstanding the fact that LCM shall have over all responsibility for the executron of the project, the consortium members shall have joint and several

liability in ensuring the completion and implementation of the project in so far as ELP is concerned.

VII. Each of the parties to this agreement represent and warrant that they have not entered into any other MOU to be part of bidding consortium for the project subject matter of this MOU nor they have sought to or will they submit bids in their individual capacity in respect of such project.

VIII. INDEMNITY:

Parties to this MOU expressly agree that they shall hold each of the other party to this agreement free from all claims and liabilities arising solely out of default committed by them and agree to indemnify the other two parties in the event of any claim arising out of or in relation to any default committed or action taken by such party.

IX. AMENDMENTS:

Parties to the MOU agree that the present MOU is being entered into for the specific purpose of participating and submitting RFQ and if it is so necessary and circumstances require this MOU in so far as it is permitted BY BPL, expressly or otherwise, be amended by mutual written agreement.

X. CONFIDENTIALITY:

Parties to the MOU expressly agree that maintenance of confidentiality of the relationship between the parties as also any and of all the information that may become available to each of the parties in respect of other party to this MOU are of confidential nature and neither parties nor their officers shall allow such of the information to become available and shall maintain fullest confidentiality. This clause shall however be not applicable to information that is already in the public domain.

XI. DISPUTES:

Parties to this MOU agree that in the event of any carification or disputes the same shall be settled by mutual consultation and in the event of the parties failing to arrive at mutually acceptable decision in respect of any dispute the same shall be referred to arbitration by an independent person to be nominated by LCM whose decision shall be final and binding between the parties.

XII. JURISDICTION:

All claims arising out of or in relation to this agreement shall be subject matter of jurisdiction of civil courts at Chennai alone.

XIII. NOTICES:

In case of any, notices should be served on the following addresses:

Party of the first part: M/s South India Corpn. Ltd.,
6th Floor, "Rani Seethai Hall"
603, Anna Salai
Chennai 600 006, India
Tel: 8295001 (5 Lines)
E mail: sicltrans@vsn.net

Party of the second part: M/s Portia Management Services Limited
Maritime Centre, Port of Liverpool
L21 1LA, UK
Tel: +44 151 949 6262
E mail: ajm@portia.mersey docks.co.uk

Party of the third part: M/s Navayuga Engineering Company Ltd.,
H.O. 48-9-17, Dwarakanagar
Vishakapatnam 530 016. India
Tel: +91 891 754602/747335/748084
Fax: +91 891 747362/748085
E mail: necche@satyam.net.in

In witness whereof, the parties hereto have set their hand and signature on the day month and year first above written at Chennai.

For SOUTH INDIA CORPORATION LTD

Witnesses:

Director

Party of the first part

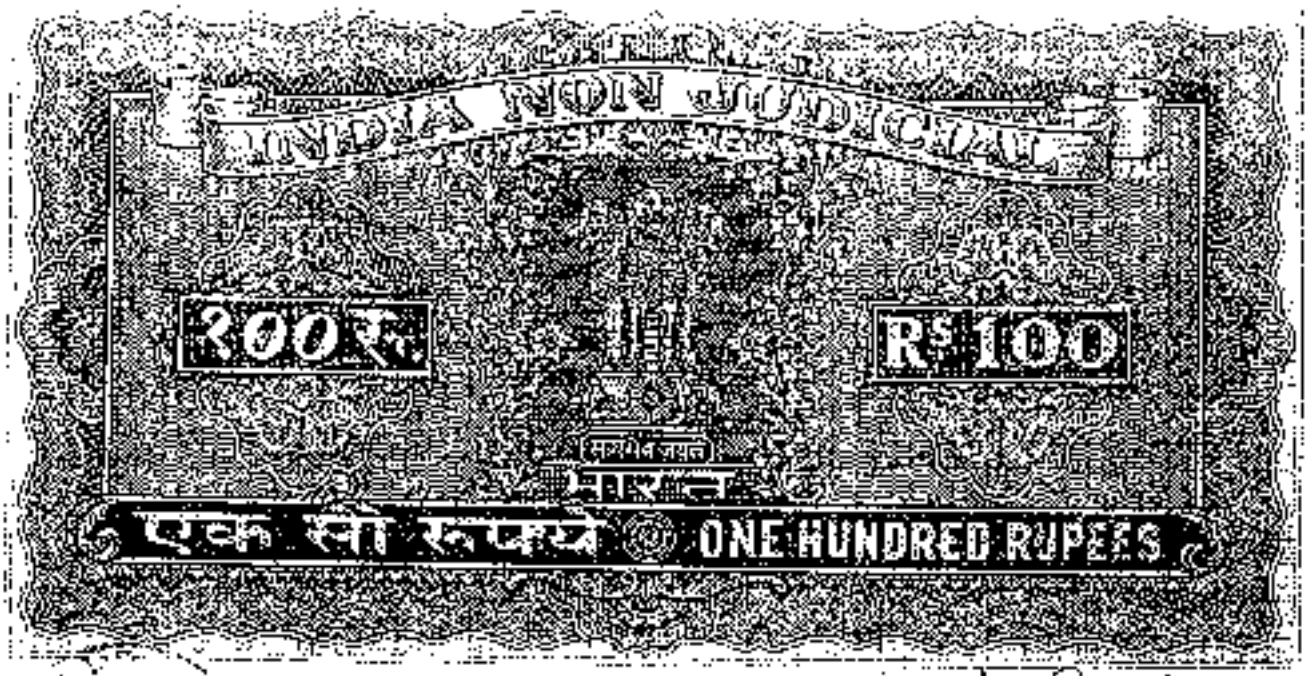
Party of the Second part

For NAVAYUGA ENGINEERING COMPANY LTD

N.S.N. BABU
Resident Director

Party of the Third part

100 Rs



L. S. [illegible]
முத்திரைத்தாள் விற்பனையாளர்
உரிமம் எ. [illegible]
[illegible]

MEMORANDUM OF AGREEMENT AMONG CONSORTIUM MEMBERS EXTENDING THE PERIOD OF THE MEMORANDUM OF UNDERSTANDING DATED 13.12.2002

THIS MEMORANDUM OF AGREEMENT is entered into at Chennai on this 20th day of September 2005

Between

M/s. South India Corporation Limited, a Public Limited company, having its Registered Office at Rani Seethai Hall, No 603, Anna Salai, Chennai – 600 006, represented by its Director (hereinafter referred to as **'Lead Consortium Member or 'LCM')**

...2

M/s. Portia Management Services Limited, Maritime Centre, Port of Liverpool, L 21 1 LA **U.K.**, represented by its Managing Director (hereinafter referred to as 'The Party of the **Second** Part' or '**PMSL**')

And

M/s. Navayuga Engineering Company Limited, having its registered office at Dwaraka Nagar, Vishakapatnam – 530 016, represented by its Resident Director (hereinafter referred to as '**The Party of the Third Part**' or '**NEC**')

WHEREAS **M/s. Ennore Port Limited (EPL)**, a Government of India Undertaking, has issued a Request for Qualification Document for selection of a **Developer** for Design, Engineer, Finance, Construct, Operate and Maintain and Market a Common User Coal Terminal on B O.T. basis at Ennore Port.

WHEREAS EPL had invited applications from interested parties in accordance with the RFQ documents in order to shortlist competent applicants, who can subsequently bid for the project.

WHEREAS the Parties have submitted the RFQ tender on consortium basis on 18th December 2002.

WHEREAS there have been delays in the tender process due to various reasons.

WHEREAS in view of subsequent developments the Parties to the **MOU** are desirous of extending the term of the MOU dated 13.12.2002, as desired by EPL

....3

NOW THIS DEED OF AGREEMENT WITNESSETH AS FOLLOWS:

1. The parties hereby agree that the MOU dated 13.12.2002 shall be valid for a period of **24 months from 12.12.2004.**

2. The parties hereby agree that all other terms of the MOU dated 13.12.2002 shall continue to operate.

IN WITNESS WHEREOF the parties hereto have set their hands and seal on the day, month and year first above written.

Party of the First Part (LCM)

Party of the Second Part (PMSL)

Party of the Third Part (NEC)

Witnesses:

1. V. Lakshmanan
   (V. LAKSHMANAN)

2.

ENNORE PORT LIMITED

07/09/2006

SIRS,

GUARANTEE NO :C702406BG0000259
AMOUNT OF GUARANTEE :INR6,00,00,000.00
GUARANTEE COVER FROM :07/09/2006 TO 06/02/2008
LAST DATE FOR LODGEMENT OF CLAIM :06/02/2008

WHEREAS THIS DEED OF GUARANTEE IS EXECUTED BY THE STATE BANK OF INDIA, CONSTITUTED UNDER THE STATE BANK OF INDIA ACT , 1955 HAVING ITS CENTRAL OFFICE AT NARIMAN POINT , MUMBAI AND AMONGST OTHER PLACES, A BRANCH AT CHENNAI AND INTERNATIONAL BRANCH HEREIN AFTER REFERRED TO AS 'THE BANK') IN FAVOUR OF M/S. ENNORE PORT LIMITED HEREIN AFTER REFERRED TO AS 'BENEFICIARY') FOR AN AMOUNT NOT EXCEEDING
6,00,00,000.00
Six crore only

AT THE REQUEST OF CHETTINAD INTERNATIONAL COAL TERMIN ID THIS GUARANTEE SHALL REMAIN IN FULL FORCE UPTO 06/02/2008 AND CANNOT BE INVOKED OTHERWISE THAN BY WRITTEN DEMAND OR CLAIM UNDER THIS GUARANTEE SERVED ON THE BANK ON OR BEFORE THE 06/02/2008

SUBJECT TO AS AFORESAID

NOTWITHSTANDING ANYTHING CONTAINED HEREIN ABOVE, OUR LIABILITY UNDER THIS GUARANTEE IS RESTRICTED TO
6,00,00,000.00
Six crore only

OUR GUARANTEE SHALL REMAIN IN FORCE UNTIL 06/02/2008. UNLESS A DEMAND OR CLAIM UNDER THE GUARANTEE IS MADE ON OUR BANK IN WRITING ON OR BEFORE 06/02/2008 ALL YOURS RIGHTS UNDER THE SAID GUARANTEE BE FORFEITED AND WE SHALL BE RELIEVED AND DISCHARGED FROM ALL LIABILITIES THEREUNDER.

AUTHORISED SIGNATORY

AUTHORISED SIGNATORY

P. SAVITRI

For STATE BANK OF INDIA

Senior Executive & Chief

10.08.06

Received the Original BG.
S. Sailakshmi
For Accounts Dept

भारतीय गैर-न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

तमिलनाडु TAMILNADU

A 200658

M. SRITHARAN -28274166
STAMP VENDER - L. No. 40/83/2000
600, ANNA SALAI - CHENNAI-600 006

THIS GUARANTEE dated 7th day of August 2006 ("the Guarantee") is issued by State Bank of India, Leather & Intl Branch, a banking company incorporated under the laws of Companies Act 1956 and having its registered office/principal place of business at 177/1, P.H.Road, Kilpauk, Chennai 600 010 (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Ennore Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor" which expression includes its successors and assigns)

WHEREAS

Chettinad International Coal Terminal Private Limited, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at Rani Seethai Hall, Vth floor, 603, Anna Salai, Chennai-600 006, hereinafter referred to as the Licensee (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bide and has been selected as prospective developer in respect of development of a coal terminal,

For STATE BANK OF INDIA

Manager

For STATE BANK OF INDIA

Manager (LC&CS)
Leather International Branch
Kilpauk, Chennai 10

R. SAMPATH

The Licensor and the Licensee have entered into a Licence agreement (hereinafter referred to as "the Agreement" as the same may be amended, modified and notated from time to time) pursuant to which the Licensee has agreed to construct the Project within 30 months from the Zero Date in accordance with the terms of the agreement.

Pursuant to Section 7 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper construction of the Project as per the provisions of the agreement.

The Licensee has accordingly directed the Guarantor to issue this Irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of **Rs.6,00,00,000** (Indian Rupees Six Crores only) upon receipt of the Licensor demand in writing and written statement stating.

a) that the Licensee has failed to fulfil its obligations under the agreement, and

b) the amount of guarantee to be encashed as per the provisions of the agreement

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or not withstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

For STATE BANK OF INDIA

Deputy Manager (Bills)
Mother Terminal Br. Chennai

For STATE BANK OF INDIA

Manager (CCOC)
Ennore International Branch
Kalpakkam, Chennai-57

R. SAMPATH
S-6072

IV. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of the agreement the Licensor may invoke the Guarantee, in part or in full, at any time as it deems fit but not less than monthly intervals and/or appropriate in its sole discretion, without giving any opportunity or recourse of the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under the agreement.

V. In case the Licensor invokes the Guarantee in parts as per the provisions of Article IV of the Guarantee, the Guarantor undertakes to keep the Guarantee valid for the amount equal to Rs.6,00,00,000 less invoked amount of the Guarantee.

VI. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time including the time of invoking this Guarantee by the Licensor, or thereafter any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the agreement between the Licensee and the Licensor.

VII. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

For STATE BANK OF INDIA

Deputy Manager (MMG)
Mumbai International Br. Chennai

For STATE BANK OF INDIA

Manager (CCCS)
Mumbai International Branch
Chennai-1.

R. SAMPATH
S-0072

ENNORE PORT LIMITED

Chennai

VIII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

IX. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the agreement may be modified, amended and supplemented by the Licensee and/or the Licensor in accordance with the terms of the agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this guarantee.

X. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

XI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the agreement, or the insolvency, bankruptcy, re-organisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defense or discharge of a guarantor or surety;
b) shall constitute a present and continuing guarantee of timely and proper construction of the project as per the provisions of the agreement
c) shall not be affected by the existence of or release or variation of any other guarantee of or security for any of the obligations of the Licensee under the agreement;
d) shall not be affected by any failure by the Licensor to perform any of its obligations under the agreement ;
e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the agreement;
g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this guarantee;

For STATE BANK OF INDIA
Deputy Manager (WHTS)
Teacher International Jn. Chennai

For STATE BANK OF INDIA
Manager (CPDS)
Teacher & International Branch
Chennai, Chennai-17

R. SAMPATH
S.E072

(i) shall not be effected by any act, omission, matter or thing which, but for this clause (viii) would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XII. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, cefements, reductions or defense for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XIII. This guarantee shall remain in full force and effect till the issue of Completion certificate. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIV. This guarantee shall be valid for an initial period of (one year) and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of (one year each or part thereof)

XV. In the event this guarantee is not renewed in the manner provided in sub-clause XIV above, such non renewal shall constitute an event of default, and the guaranteed amount shall become immediately payable and shall be transferred to the Licensor (by the Guarantor issuing in favour of the Licensor, a demand draft payable at

XVI. This guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the High Court of Chennai, India for the purposes of any suit, action or other proceeding arising out of this Guarantee or the subject matter hereof brought by the Licensor or their successors or assigns and to the extent permitted by applicabe law hereby waive, and shall not assert, by way of motion, as defense, or otherwise, in any such suit, action or proceedings any claim that such suit, action, or proceedings is brought in an inconvenient forum, that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

For STATE BANK OF INDIA

Deputy Manager (Inter.Mal Br. Chennai

For STATE BANK OF INDIA

R. SAMPATH
S.E072

The guarantee shall remain in force until 6th August 2007 and unless a claim under the guarantee is lodged with us (Bank) within 6 months from the date of expiry of the guarantee viz. 6th February 2008, all rights of the Ennore Port Ltd, shall be forfeited and we (Bank) shall be relieved and discharged from all liabilities hereunder.

Not withstanding anything herein contained our liability under this guarantee shall :

i) be limited to a sum of Rs.6,00,00,000/- (Rupees Six crores only)

ii) stand completely discharged and all your rights under this guarantee shall stand extinguished if no claim or demand is received by us in writing on or before **6th February 2008.**

In witness whereof this Guarantor has been duly executed on this 7th day of August 2006.

Guarantor

For STATE BANK OF INDIA

7 AUG 2006

Deputy Manager (Bills)
Letter International Br. Chennai

(R.RAMANUJAM)
M. 6455
L.B. CHENNAI (7024)

Acknowledged and accepted

For STATE BANK OF INDIA

Manager (GOCS)
Letter of International Branch

R. SAMPATH
S-6077

(The Licensee)

(The Licensor)

ENNORE PORT LIMITED

Chennai International Coal Terminal Pvt. Ltd.
Chennai 600 096

SOUTH INDIA CORPORATION LIMITED
Admn Office : 'Rani Seethai Hall' 6th Floor, 603 Anna Salai, Chennai - 600 006 INDIA
Phone 28295031, 28295152 52489911/22/33 Grams: SOUTHTRANS Fax : 044-28295671 E-mail : chrans@vsnl.co.
TNGST RC No 112/214001', DST RC No 112/573413 KGST No.240/13/232, APGST No VSP/0014/754F
Regd Office: Rani Seethai Hall,5th Floor,603,Anna Salai Chennai-600 006 Phone:28292188-28291586 Website:www.chettinad.com

COMMERCIAL PROPOSAL

Date: 5.12.06
Place: CHENNAI

The Director (Operations)
Ennore Port Limited
15, Kasturirangan Road
Alwarpet
Chennai - 600 018

17.2.06

Dear Sir,

Sub: Detailed Techno-Commercial Proposal for selection of a Developer, to design engineer, finance, construct, operate, maintain market and transfer a common user coal terminal on B-O-T basis at Ennore Port

1. We, the undersigned Eligible Bidder, submit the following as our Commercial Proposal in response to the RFP issued by EPL.

	% of Gross Revenue	
	In numerals *	*In words**
Revenue Share	52.524%	fifty two point five, two, four percent

2. We confirm that our Commercial Proposal conforms to all the terms and conditions stipulated in the Request for Proposal.

3. We confirm that our Commercial Proposal is final in all respects and contains no conditions.

4. We confirm that in the event of more than one Technically Evaluated Responsive Bidders quoting the same price bid as per item (d), EPL shall break the tie by inviting a revised Commercial Proposal from the concerned bidders.

5. We confirm that EPL shall have the option to invite the next highest ranked bidder for negotiations, and such decision would be final and binding, in the event

For SOUTH INDIA CORPORATION LTD.

Wholetime Director

confirmation in negotiation

(a) We fail or refuse to make the full payments of the Upfront Development Charge within the stipulated time (viz; 30 days from the issue of the Letter of Intent to us) and / or

(b) We fail or refuse to execute the Licence Agreement within the stipulated time.

(c) We commit a material breach of any of the terms and / or conditions contained in the RFP and / or subsequent communication from EPL in this regard.

6. We confirm that, the information submitted in our Commercial Proposal is complete and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Proposal.

7. We confirm that we have studied the provisions of relevant Indian laws and regulations required to enable us to prepare this Commercial Proposal and as required to design, engineer, finance, construct, operate, maintain market and transfer the Terminal, in the event that we are finally selected.

Thanking you,

Yours sincerely,

For and behalf of : M/s. South India Corporation Limited

Signature

For SOUTH INDIA CORPORATION LTD.

Wholetime Director

Name of the Person : Mr. SP. Palaniappan

Designation : Whole Time Director

LICENCE AGREEMENT

BETWEEN

ENNORE PORT LIMITED

AND

CHETTINAD INTERNATIONAL COAL TERMINAL PRIVATE LIMITED

TO DESIGN, ENGINEER, FINANCE, CONSTRUCT, OPERATE, MAINTAIN, MARKET AND TRANSFER A COMMON-USER COAL TERMINAL AT ENNORE PORT

Agreement No: EPL/45-D/2002

Licence Agreement: Part II – Project Details

September 2006

This document contains 24 pages including this page plus 6 drawings

ENNORE PORT LIMITED

Chettinad International Coal Terminal (P) Ltd.

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1. INTRODUCTION

This section highlights the location, connectivity and the existing facilities available at the port site environment and details of this project in brief.

1.1. Location

Ennore Port, the 12th Major Port of India is located about 11 nautical miles i.e. 20 km to the North of Chennai Port along the Coromandel Coast in the State of Tamil Nadu at Latitude 13°15'16' North and Longitude 80°21'22' East. The Ennore Port is the first corporate port managed by Ennore Port Ltd.

The present port is developed close to the North Chennai Thermal Power Station (NCTPS) of the Tamil Nadu Electricity Board (TNEB). The Buckingham Canal flows to the West of the Port. The site allocated for the development of Ennore port is bordered on the south side by the NCTPS and west side by the Buckingham canal. At the north side the port area borders the Tamil Nadu Industrial Development Corporation (TIDCO) Chempark.

1.2. Connectivity

The port is well connected to the hinterland through an existing network of National Highway / State Highways and the Railways.

The Ennore Port is accessible by a road that branches off from the road leading to the NCTPS. The NCTPS road is connected to the TPP road, which is the main arterial road. NH 4 (Chennai - Bangalore), NH 5 (Chennai - Calcutta) and NH 45 (Chennai – Madurai) connect Ennore to its hinterland.

A siding from the Southern Railway mainline net work presently connects NCTPS. EPL has plans to provide an exclusive siding to cater to Ennore Port.

1.3. Existing Facility (Phase I Development)

The Ennore Port was originally planned as a satellite port of Chennai Port for shifting of handling dirty/ dusty cargoes such as coal and iron ore handled in bulk so as to provide additional facilities for handling containers for which Chennai has been earmarked as the hub port on the East Coast. It was also intended that the environmental degradation in the areas of the metropolis close to the Chennai Port would get substantially alleviated.

In the first phase development of Ennore Port, a sheltered harbour, a coal terminal and three small crafts berths were built. The sheltered harbour consists of the South and North breakwaters. South breakwater is 1.07 km long and the North breakwater is 3.08 km long. The breakwaters create a protected harbour basin of 243 ha in area and dredged to – 15.50 m below chart datum. The approach channel to the port is SSE oriented and is 250 m wide presently deepened to -16m. Both the breakwaters have round heads provided with lighted beacons as per International Conventions. The channel is also marked by buoys as per the IALA Convention.

The coal terminal consists of two berths for handling coal, required for the power stations of TNEB at North Chennai, Ennore and Mettur. The alongside depths is -15 m below chart datum. The coal is moved from the Talcher mines through Paradip Port by sea and unloaded at the Coal Terminal. These berths are equipped with grab unloaders, mobile hoppers and belt conveyor system for direct delivery to NCTPS. The two coal berths presently handle about 10 million

tonnes of Thermal coal, which could be augmented to 16 MTPA by providing additional shore based equipment in future.

The existing facilities are shown in Drawing No. 1.

1.4. Master Plan

The Master Plan for the overall development of the port has been drawn by EPL with considerations as to the sizes and locations of future berths, turning circle, depths in the channel/ basin, allocation and reservation of land for port related activities outside the port boundaries. The planning of the proposed coal terminal should comply with the overall master plan and land use plan of the port.

In order to develop additional capacities through private sector participation, in the immediate future, the following projects have been activated

- A multi-user Coal terminal for users located in the hinterland
- An Iron Ore terminal for the export of iron ore, which is presently being handled at Chennai Port.
- A Marine liquid terminal for handling POL products, LPG, Chemicals etc.
- A container terminal

The location of the proposed Coal berth is shown in Drawing No. 2.

1.5. Site Environment

The coastal area at Chennai is characterised on a large scale by a relatively stable beach consisting of coarse sand, a few rivers and the presence of lakes located close to the coastline and presence of shoals. The coastline stretches in a North-North Eastward direction up to the Ennore Creek where the river Kortalaiyar debauches into the Bay of Bengal. The coast is long and sandy and the beach gradient is gentle, it is exposed to continuous moderate surf. There are number of shoals known as "Ennore Shoals" North of the North Breakwater. The wave energy is attenuated as the waves travel over these shoals. The mouth of the Ennore creek is located South of the South Breakwater. The coastline is covered with small sand dunes with a height of approximately +2.6 m CD. Behind, the land drops to approximately +3 m CD and continues westward to the Buckingham Canal. The Buckingham Canal stretches approximately 400 km parallel to the coastline and connects with the sea through the Ennore Creek. The Buckingham Canal has a width of about 15m and depth varying from 1 to 2m. There are number of salt pans located to the west of the Buckingham Canal.

1.6. Present Proposal

The present proposal is for development of a multi-user coal terminal through a Build Operate Transfer process (BOT). The terminal will have a berth located parallel to the existing coal berths. Ships in the range of 40,000 to 77,000 DWT are expected to be handled at this berth. An alongside depth of -15 m CD will be initially provided by EPL. While planning the present system, it is necessary for the Licensee to keep in mind the option for designing the berth to suit handling bigger vessels. EPL will consider deepening upto -18m CD alongside berth if found viable based on the commitment of the Licensee with respect to the throughput and frequency of calling of such vessels.

The stockyard will be located in an area, which is about 2.5 km away from the berth outside the Port boundary wall west of Ennore Creek. The stockyard will have suitable equipment / facilities for evacuation by rail, road or conveyors linking to nearby users. The stockyards for iron ore and coal will be located side by side, as both commodities will have to share common rail connectivity. The suggested routing of the conveyor is shown in Drawing No.3.

2. SITE CONDITIONS

2.1. Climate and Meteorological Conditions

The climate at Ennore is tropical with high humidity. The coastal area is normally governed by land and sea breezes.

2.1.1. Monsoons

The region experiences two distinct monsoons i.e. the South West Monsoon from mid April to mid August and Northeast Monsoon from mid October to mid January. The SW monsoon is normally moderate in strength. It is warm and very humid in the day and night. The NE monsoon is rather more variable in speed and direction but the strength is moderate to fresh, between the N and NE for long spells over most of the area when well established.

The transition period, April & May, is the hot season with very variable weather and thundery squalls. Somewhat similar conditions prevail during the post monsoon season, October & November. The tropical storms, known as "Depressions or Cyclones" may strike this region during this period.

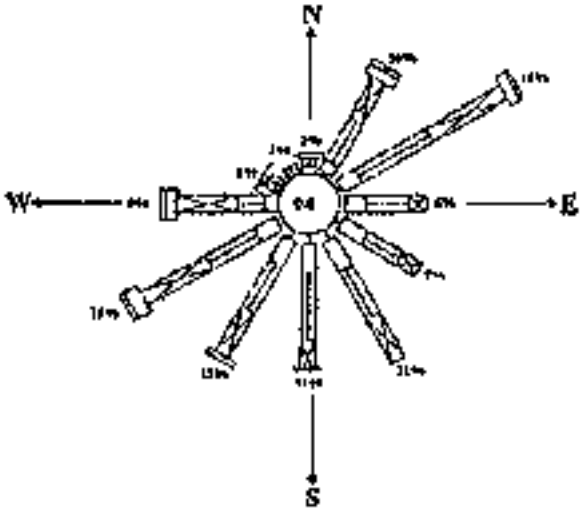
2.1.2. Winds

The wind rose shown in Figure-1 is representative for the wind climate on the open sea near Ennore.

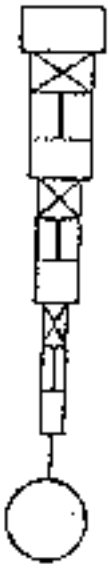
The wind rose shows the largest frequencies of occurrence from north-eastern and south-western directions. This corresponds with the monsoon seasons and is in accordance with more general data for the western part of the Bay of Bengal. Southern to south-eastern wind directions also occur rather frequently, mainly during the transition period between the two monsoons.

The area falls under Zone III as per IS 875 (1987) Code of Practice for design loads for buildings and structures.

Figure 1: Windrose at Ennore Port



Explanation



BEAUFORT	m/s
> 10	28.5 -
10	24.5 - 28.4
9	20.8 - 24.4
8	17.2 - 20.7
7	13.9 - 17.1
6	10.8 - 13.8
5	8.0 - 10.7
4	5.5 - 7.9
3	3.4 - 5.4
2	1.6 - 3.3
1	0.3 - 1.5
< 0	0.0 – 0.2

Item	Represents
Type of Bar	Height/Speed
Direction of Bar	Direction
Length of Bar	Occurrence (%)
Number in centre of rose	Occurrence (%) In lowest case

2.1.3. Air Temperature

Table- 1 gives the monthly average air temperature for the period 1975 to 1984.

Table 1: Monthly average air temperature

(In degrees Celsius)

Month	Av. Maximum	Av. Minimum
January	28.67	20.69
February	30.22	21.89
March	32.28	23.60
April	34.26	26.37
May	36.54	27.98
June	36.42	27.53
July	34.20	25.55
August	34.24	25.58
September	33.45	25.41
October	32.22	24.59
November	29.39	23.08
December	28.47	22.07

It is observed from the above Table that May and June are the hottest months of the year with the highest average maximum and the highest average minimum temperatures. December and January have the lowest average maximum and lowest average minimum temperatures. The highest maximum temperature recorded in the area was 43.6°c on 23-5-1980 and the lowest minimum temperature recorded was 15.6°c on 27-01-1969.

2.1.4. Relative Humidity

The Chennai region is generally humid, with the maximum relative humidity above 90% throughout the year. The maximum and minimum relative humidity values averaged for each month over a ten year period from 1975 to 1984 are presented in the Table 2.

Table 2: Maximum and minimum relative humidity

Month	Maximum (%)	Minimum (%)
January	97.0	38.3
February	95.2	35.2
March	94.4	33.6
April	95.2	35.2
May	93.0	23.1
June	94.0	27.5
July	95.3	33.1
August	95.8	36.7
September	95.7	41.7
October	98.4	42.2
November	98.8	47.9
December	98.2	44.3

2.1.5. Visibility

The visibility in the Ennore Port area is generally good, being more than 20 km. for a major part of the year, occasionally extending to 50 Km. On an average, visibility is between 4 and 10 km. on 40 days per year, and less than 4 Km on 4 days per year.

2.1.6. Rainfall

Ennore has medium rainfall. More than 60% of the rains fall during the NE monsoon period (October to December). The total rainfall shows considerable variation, from 550 mm in 1982 to 1525 mm in 1975. The north east monsoon period i.e. October to December is the wettest period of the year with more than 60% of the annual rain fall. The annual rainfall shows considerable variation over the years. For 1972 to 1983 the total annual rainfall varied from 550 mm in 1982 to 1525 mm in 1975. The total annual rainfall for the period 1972-1983 is shown in Table -3.

Table 3: Total annual rainfall for the period 1972-1983

Year	Total Rainfall (In mm)
1972	1100
1973	1100
1974	818
1975	1525
1976	1381
1977	1285
1978	882
1981	776
1982	550
1983	771

The average monthly rainfall during the period 1972-1983 is shown in Table - 4.

Table 4: Average monthly rainfall

Month	Average Rainfall (In mm)
January	10.12
February	38.35
March	0.60
April	0.40
May	20.00
June	59.76
July	126.81
August	164.08
September	144.85
October	279.60
November	416.00
December	158.50

2.2. Oceanographic Conditions

2.2.1. Waves

The National Institute of Ocean Technology (NIOT) had deployed a wave rider buoy off Chennai Port in the water depth of 16 m for measuring waves off Chennai. The buoy could measure Ocean waves and currents only for a part of 1998 during which cyclones have not been crossed along the Chennai Coast. After making interpolation for unavailable data and correction for calibration based on visual observation wave climate for the year 1998 has been generated. From this data monthly mean values of wave parameters are estimated and these values are presented in Table–5

Table 5: Monthly mean wave parameters estimated from measured data

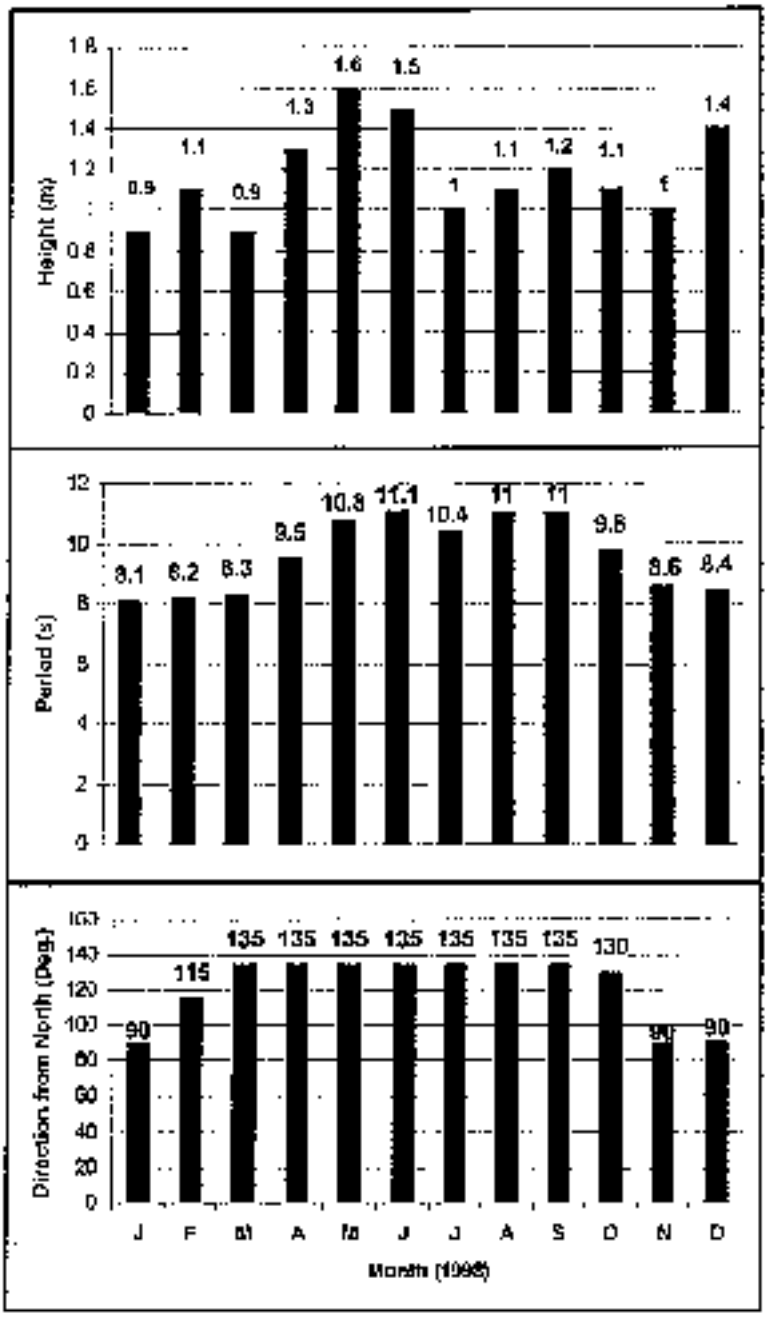
Month (1998)	Significant wave Height (m)	Significant wave Period (s)	Wave Direction From True North (Degrees)
Jan	0.9	8.1	90
Feb	1.1	8.2	115
Mar	0.9	8.3	135
Apr	1.2	9.5	135
May	1.6	10.8	135
June	1.5	11.1	135
Jul	1.0	10.4	135
Aug	1.1	11.0	135
Sep	1.2	11.0	135
Oct	1.1	9.8	115
Nov	1.0	8.6	90
Dec	1.4	8.4	90

Notes:
1. 90° from True North = Waves approach from East
2. 115° from True North – Waves approach from East of South East
3. 135° from True North = Waves approach from South East

The variation of these wave characteristics over the year has also been given in the Figure-2 From the data the following observations can be made:

Ennore is very near to Chennai. Wave climate off Chennai Port may be adopted for Ennore Port. Significant wave height varies from 0.9 m to 1.6 m. Maximum significant wave height of 1.5 and 1.6 m has been observed in May and June of summer and SW monsoon period. The Average wave height is 63 % of significant wave height. So the observed average height varies from 0.57 to 1.0 m during the year 1998.

Figure 2 Monthly variation of significant wave height, wave height, wave period and direction at Ennore Port



Wave periods vary from 8.1 to 11.1 sec. Higher value of wave periods have been during South West monsoon.

Waves at Ennore approach predominantly from two directions, 135° North from March to September and 90° North from November to January. During the transition period of these predominant directions, waves approach from 115° North in the month of February and October.

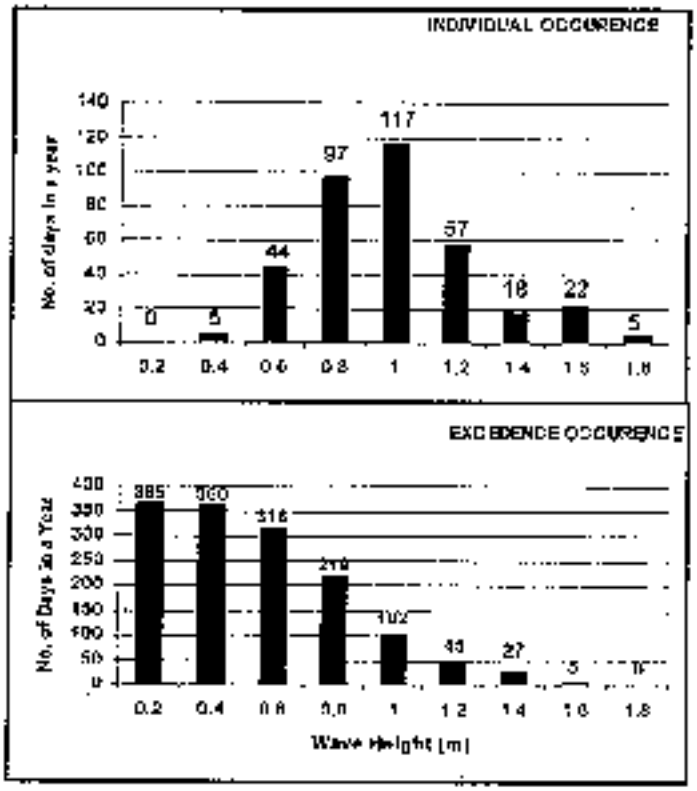
Based on the early data, the number of days the waves exceed a particular height in the region of Ennore has been worked out and indicated in Table–6 & Figure 3.

Table 6: Wave occurrences in a year around Ennore

Wave Height (m)	Occurrence (No. of days)	Exceedence (No. of days)
0.2	0	365
0.4	5	360
0.6	44	316
0.8	97	219
1.0	117	102
1.2	57	45
1.4	18	27
1.6	22	5
1.8	5	0

It can be seen from Table –6 that waves in this region may not exceed 1.6 m in a year have been no cyclones. However, since the berth is located within the port basin and well protected by the breakwater, the maximum wave height at the location of the berth is less than 0.45 m

Figure 3: Wave occurrences in a year around Ennore Port



2.2.2. Tides

The Ennore port is located approximately 20 km. north of Chennai and hence the variation in the level and phase of the tide between both ports is expected to be small.

The tides at Chennai are semi-diurnal with daily inequalities. The tide levels at Chennai are with respect to Chart datum are presented in Table – 7.

Table 7: Tide levels at Ennore

Description	Height (in m)
Highest High Water	+1.50
Mean High Water Springs	+1.10
Mean High Water Neaps	+0.80
Mean Sea Level	+0.65
Mean Low Water Neaps	+0.40
Mean Low Water Springs	+0.10
Lowest Low Water	-0.10

2.2.3. Currents

The direction of the current during the north-east monsoon, namely mid-October to mid-January is directed southwards and in south-west monsoon namely from mid April to mid August, the current is directed northwards. The Currents in the coastal zone are approximately 0.15 to 0.25 m/s.

National Institute of Ocean Technology (NIOT) had measured currents at Ennore Port for three seasons for a period of 30 days as under:

- Season – 1 January to February
- Season – 2 May to June and
- Season – 3 December

at a water depth of 10m. The flow is parallel to the coast and the direction changes from south to north at the end of Northeast Monsoon. The current speed for the three seasons is as under:

Table 8: Current observations at Ennore

Season	Period of observation	Minimum (m/sec)	Maximum (m/sec)	Mean (m/sec)
1	18.02.99 to 19.3.99	0.01	0.39	0.22
2	28.5.99 to 5.6.99	0.05	0.42	0.28
3	14.12.99 to 21.12.99	0.09	0.46	0.25

However, since the proposed jetty is located inside the port basin, well protected by the breakwater, the currents shall be negligible.

2.2.4. Model Studies

The tranquillity conditions in the harbour for different wave scenario have been studied through physical modelling by the Central Water and Power Research Station, Pune and mathematical

modelling by the National Institute of Ocean Technology, Chennai. The findings of these studies indicate adequate tranquility conditions in the harbour.

2.3. Bathymetry

The bathymetry in the vicinity of the proposed coal berth is given in Drawing No.4.

2.4. Soil Conditions

2.4.1 Geo-technical Investigations

Marine and land geo-technical investigations were carried out through M/s Fugro-KND Geotech Ltd., Mumbai.

The following reports of M/s Fugro-KND Geotech Ltd are forwarded to the bidders with this document in the form of CDs.

(i) Final report on "Marine Geotechnical Investigation at Ennore Port" – December 2003
(ii) Draft report on "Land Geotechnical Investigation at Ennore Port" – December 2003

The data is given in good faith as an information. Bidders are free to conduct any further investigations to satisfy themselves of site conditions.

3. DEVELOPMENT PLAN

3.1. Introduction

The coal terminal is to be planned as a multi-user facility. The berth will be located in the basin parallel to the existing coal wharf as shown in Drawing No. 2. The berth will be connected to the shore though a suitable approach structure. The broad features of the development envisaged is described in this section.

3.2. Need for the Project

The Ennore Port is functioning on a landlord concept in which EPL develops, maintains and retains the basic port infrastructure such as breakwaters, approach channel and dredged port basin. The development and operation of all terminals would be through private sector participation on a BOT basis. Port regulatory functions, marine services and port security will be under the control of the Licensor.

The existing coal berths and handling system have a capacity to handle about 12 MTPA of thermal coal, which could be upgraded to 16 MTPA on installation of additional equipment. The depth available alongside the berths is -15 m CD. Ships upto 65 / 77000 DWT can be handled at these berths. These berths are connected to the stackyards at NCTPS premises adjacent to the Port through conveyors. A part of the coal unloaded at the Port is consumed by the NCTPS while the balance is transported to other power stations of TNEB through rail. Wagon loading facilities are available in the NCTPS premises.

The existing berths are dedicated to handle the present and future requirements of thermal coal of TNEB. They are not available to other users. The existing coal berths will be allowed to handle only the coal consumed in the power plants wholly or partly owned by TNEB till the exclusivity period. After the exclusivity period such a restriction will not apply. The upgrading to handle 16 MTPA will be done as and when required for such power plants.

To meet the requirements of other users, there is a need for another coal terminal with stockyard and facilities for evacuation through rail and road. Ships in the range of 40,000 to 77000 DWT are expected to be handled in the proposed berth. However, there may be requirements to handle Cape size (150,000 DWT) vessels in future. Hence, while planning the present system, it would be desirable to keep in mind such future requirements. An alongside depth of –15 m CD will be provided by EPL. The option of designing the berth to cape size vessels is left to the Licensee. In future, EPL will consider deepening upto -18m CD alongside berth if found viable based on the commitment of the Licensee with respect to the throughput and frequency of calling of such vessels.

3.3. Traffic Information for Planning the Capacity

The traffic information provided in this section is only indicative and the bidders are required to do their own due diligence.

3.3.1. Shifting of Coal from Chenai Port to Ennore Port :

The Strategic Development Plans of Chennai and Ennore Ports recommends that the coal being handled at Chennai Port be shifted to Ennore Port to make Chennai Port cleaner. The handling of thermal coal of TNEB has already been shifted. Chennai Port is still handling nearly 3.5 to 4 MTPA of coal for various users including KPCL power plant at Raichur and APSEB power plant at Muddanuru. The previous two years traffic of coal at Chennai Port are given below for reference.

Quantity of Coal in MTPA

Year	Thermal	Coking	Total
2003-04	1.854	1.343	3.197
2002-03	2.685	0.973	3.658

3.3.2. Requirement of Coal for Power Plants in the Hinterland

The new power plant at Bellary is another potential consumer that can generate further coal traffic

3.3.3. Coke Oven Plant of Venkatesh Coke and Power Ltd.

The traffic projected for the above plant that is proposed to be located in the vicinity of Ennore Port (600 m to 1000 m from stockyard):

Metallurgical Coal	1.00 MTPA (Import)
Coke (Product of Coke Plant)	0.75 MTPA (Export)

3.3.4. Possibility of More Requirement Triggered by this Development

Development of a modern coal terminal at Ennore Port may lead to development of new power plants in the hinterland generating fresh coal imports in future.

3.3.5. Proposed Capacity of the Terminal

The above traffic prospects may justify planning the capacity of the proposed terminal to be 8 MTPA.

3.4. Development and Operation by the Licensor

The Licensee shall develop, maintain and operate the terminal. The coal terminal consists of the following components:

- Berth including accessories (fenders, bollards etc.) with suitable approach to the shore
- Cargo handling equipment at the berth
- Conveyors connecting the berth to the stackyard
- Stackyard for transfer of cargo to rail, road and conveyors linking to user premises
- Stacking and Reclaiming System
- Delivery System
- Railway Sidings
- Roads
- Utilities

These are described further in Section 4.

3.5. Phased Development of the Terminal

As stated in Section 3.3.5, the planning of the terminal should be based on a capacity of 8 MTPA. This capacity can be developed in a phased manner. The first stage development should be for a capacity of 4 MTPA. The minimum configuration of the facilities required for the first stage are given in Section 4. The Licensee shall propose in his DPR the system capable of meeting the minimum requirements as well as his plans for meeting the ultimate requirements of the projected traffic.

4. MINIMUM REQUIREMENTS IN THE FIRST STAGE

The Licensee shall adhere to good industry practices and design a system to achieve a minimum throughput of 4 MTPA. The design should provide for augmenting the system to a throughput of 8 MTPA.

The requirements of the various sub-systems are given below.

4.1. Berth including accessories with suitable approach to shore

The berth shall be capable of accommodating ships upto 77,000 DWT. A depth of -15 m CD will be initially provided alongside berth. The bidders have an option for designing the berth to suit handling bigger vessels. EPL will consider deepening upto -18m CD alongside berth if found viable based on the commitment of the Licensee with respect to the throughput and frequency of calling of such vessels.

The berth shall be provided with necessary accessories (fenders, bollards).

The berth will be equipped with handling equipment, conveyors for the transfer of coal from the berth to the stackyard located at a distance of about 2.5 km and the associated facilities /services.

A suitable approach to the shore will be required to connect the berth to the shore.

The layout of the proposed coal berth showing the conveyor alignment emerging from the berth is shown in Drawing No.5.

The berth shall be of open type piled construction with concrete superstructure.

4.2. Cargo Handling Equipment at Berth

Shore based unloaders of suitable design and capacity.

- Main conveyor of suitable capacity linking the berth to the stockyard.
- Loading equipment for export if considered necessary.
- In case of self-unloading ships a separate hopper of suitable capacity may be needed (optional).

Conventional (non-mechanised) handling of cargo will not be permitted.

4.3. Conveyors Connecting the Berth to the Stackyard

The conveyor system will transfer coal unloaded at the berth to the stackyard. The land conveyor from the berth to the stackyard will be about 2.5 km long and installed along the conveyor corridor of 10 m width (maximum) adjacent to the proposed iron ore conveyor. This lead conveyor shall be connected to the branch conveyors in the stack yard through junction towers. The conveyor structure from the berth to the storage area shall be aligned along the conveyor corridor of 10 m in width (maximum) as shown in the Drawing No.3 and 5. The structure shall be elevated suitably across the water bodies, roads and railway lines. The Licensee shall take the approval of competent authorities for such crossings. The conveyor should be covered to prevent blowing of dust and degrading the environment

4.4. Stackyard

The stackyard is located west of Ennore creek as shown in Drawing No.3 at a distance of about 2.5 km from the berth outside the Port boundary wall. The stackyards for iron ore and coal are adjacent to each other as they share the common rail connectivity. The area of the stackyard is about 50 acres. However, land if required in excess of 50 acres will be allotted subject to availability.

The existing ground levels are ranging around + 0.5 m CD to + 1.0 m CD (average). EPL will arrange to raise the ground level of the stackyard area, as per the requirement of the operator, upto a maximum level of +2.5 m CD. EPL has the option of utilising either the dredged material or fly ash for raising the ground level. EPL will not undertake compaction of the placed material. The Licensee shall identify in the DPR the exact area requirement of the stackyard. The Licensee shall design and provide suitable pavement in the stackyard taking into consideration the bearing capacity, soil strength characteristics etc. of the ground.

The stackyard will have suitable system / facilities for evacuation by rail, road or conveyors linking to nearby users. The Licensee shall design the appropriate storage system to suit the type and mix of different grades of coal, number of users, parcel sizes, layout of railway sidings and handling facilities. Based on the evacuation modes and throughput expected, the Licensee will plan and install the equipment in the yard

4.5. Stacking and Reclaiming System

Suitable system may be proposed in the DPR. The system proposed should meet the minimum specified throughput and should be upgradable to the ultimate throughput.

4.6. Delivery System

Suitable system / facilities for entry / evacuation of cargo by rail, road or conveyors linking to nearby users may be proposed in the DPR. The system should meet the minimum specified throughput and should be upgradable to the ultimate throughput.

4.7. Rail Sidings

EPL will provide rail connectivity upto the exchange point of the holding yard and the main lines of the Indian Railway System. The rail connectivity between the exchange point and the stackyard shall be provided by the Licensee. It is the responsibility of the Licensee to provide all the facilities including rail related inside the yard premises for the evacuation of coal through rail. The Licensee shall obtain the necessary certification from the Railway Authorities for the facilities provided in the yard for railway operations, before commissioning and at required intervals during the Licence period.

EPL will co-ordinate with the Railways and the various Terminal Operators, the movement of trains between the terminals and the main railway system at the exchange point / holding yard.

The Licensee will be responsible for movement of trains between the holding yard and his terminal for the purpose of loading operation. For this a suitable locomotive will be required and this has to be provided by the Licensee.

4.8. Roads

EPL will provide road access upto the boundary limits of the Licensed premises. Within the boundary limits , the required roads will be constructed and maintained by the Licensee.

4.9. Utilities

4.9.1. Fire Fighting

The Licensee will plan and install comprehensive fire fighting equipment, fire hydrants etc, as prescribed under the relevant standards for the terminal.

4.9.2. Pollution Control Measures

The Licensee shall provide and implement various pollution control measures as specified in the various environmental protection policies and Acts / Rules as under:

- The Water (Prevention and Control of Pollution) Act 1974 and subsequent amendments
- The Air (Prevention and Control of Pollution) Act 1981 and subsequent amendments
- The Environment Protection Act 1986
- The Environment Rules 1986

Most of European countries adopt a system known as BATNEEC (Best Available Techniques (or Technologies) Not Entailing Excessive Cost) for environmental protection. The concept has been

clearly defined in the UK Department of Environment Guidance on Integrated Pollution Control. In fact, the Secretary of State for the environment issues guidance for coal handling which recommends a number of infrastructure and operational innovation for minimising or preventing dust emissions. The general recommendations of coal handling are as under

- Avoiding spillage and maintaining high standards of cleanliness in the berth area, conveyor corridor and stockyard.
- Dampening materials , cleaning and wetting of road surfaces, sheeting and washing of lorries ;
- Enclosure of plant and specific operations, particularly at transfer points and feed chutes ;
- Minimising drop heights ;
- Using chutes to reduce free fall ;
- Dust extraction to suitable receptors, such as bag filters ;
- Landscape bunds, vegetation or wind fences ;
- Training staff at all levels.

The Licensee shall keep in view the above recommendations while formulating the Environmental Protection Plans.

Apart from the above, the Licensee will develop green belts in and around the stockyard area to comply with the environmental requirements.

4.9.3. Services

Electric Supply: The Licensee has to arrange for power supply from TNEB directly. EPL will take up with TNEB the issue of providing a common substation for all terminals. This will be done on best efforts basis. EPL cannot commit and take responsibility for decision of TNEB regarding the substation. All the fittings in the terminal shall be provided by the Licensee.

Water Supply: The Licensee has to make his own arrangements.

Bunkering: The bunkering will be available through an agency nominated by EPL. Licensee or Shipping Lines can avail this facility.

4.9.4. Other Support Facilities

Any other facilities required for the development and operation of the coal terminal will have to be arranged by the Licensee.

4.9.5. Security Arrangements

CISF looks after general security of the port and manning the gates. The Licensee shall abide by the security regulations / procedures as stipulated by the Licensor from time to time. The Licensee shall provide his own security arrangements for his assets.

5. COMPLETION PERIOD

The completion period of the project shall be as per the License Agreement Part – I Commercial Terms.

6. LICENSOR'S ROLE

- Providing an initial dredged depth at the berth area upto – 15.0 m CD
- Rail connectivity upto the entry point of the stackyard
- Raising the stack yard area from the existing levels upto a maximum of +2.5 m CD
- Providing assistance for establishment of common sub-station by TNEB.
- Co-ordination between the Railways and various Terminal Operators for railway operations.
- The Licensor shall provide a road access upto the entry point of the stackyard.

7. GUIDELINES FOR DESIGN

7.1. Size of Design Vessel

The size of design vessel for the design of the berth structures will be 77,000 DWT. The bidders have an option of designing the berth to suit handling of bigger vessels, suitable for -18 m CD alongside depth.

7.2. Codes and Standards

The planning and designing of the berthing structures and other port facilities shall be as in accordance with the applicable Indian codes and standards. Whenever, Indian Standards are not available for a particular application, other reputed International Codes or guidelines can be used. A list of recommended codes and standards is given Section 9.

8. PERFORMANCE STANDARDS

The total system shall be adequate to meet the annual throughput specified. The minimum expected performance standards are as under:

- 40,000 DWT vessels: 30,000 tonnes per day
- 77,000 DWT vessels: 50,000 tonnes per day
- 150,000 DWT vessels: 60,000 tonnes per day

9. APPLICABLE CODES AND STANDARDS

The recommended codes and standards for the planning and designing of the terminal are indicated below. Additional codes and standards shall be referred to if required.

9.1. Indian Standards for Ports and Harbours:

1	IS 7314-1974	Glossary of terms relating to Ports and Harbour engineering.
2	IS 4651 (Part I) 1974	Code of Practice for planning and design of ports and harbours (Part I – Site investigation)
3	IS 4651 (Part II) 1989:	Code of Practice for planning and design of ports and harbours (Part II Earth Pressures).
4	IS 4651 (Part III) 1974:	Code of Practice for planning and design of ports and harbours (Part III- Loading)
5	IS 4651 (Part IV) 1989	Code of Practice for planning and design of ports and harbours (Part IV – General design considerations)
6	IS 4651 (Part V) 1980	Code of Practice for planning and design of ports and harbours (Part V – Layout and functional requirements)
7	IS 9527 (Part I) 1981	Code of Practice for design and construction of ports and harbour structures (Part I- Concrete Monoliths)
8	IS 9527 (Part II) 1989	Code of Practice for design and construction of port and harbour structures (Part II – Caissons)
9	IS 9527 (Part III) 1983	Code of Practice for design and construction of port and harbour structures (Part II – Sheet Pile Walls)
10	IS 9527 (Part IV) 1980	Code of Practice for design and construction of port and harbour structures (Part IV – Cellular Sheet Pile Structures)
11	IS 9527 (Part V) 1989	Code of Practice for design and construction of port and harbour structures (Part V – Open Pile Structure)
12	IS 9527 (Part VI) 1989	Code of Practice for design and construction of ports and harbour structures (Part VI – Block Work)
13	IS 10020 (Part IV) 1981	Recommendations for planning and design of ports and harbour components (Part IV – Slipway)
14	IS 3443-1966	Specification for crane rail sections
15	IS 6426-1972	Specification for pile driving hammer
16	IS 807-1963	Code of Practice for design, manufacture, erection and testing of cranes and hoists.

9.2. Standards for Roads, Bridges, Reinforced Concrete, etc,

1. IRC – 5 (2985)	Standard Specifications and Code of Practice for Road Bridges, Section I General Features of Design
2. IRC - 6(1966)	Standard Specifications and Code of Practice for Road Bridges , Section II Loads and Stresses
3. IS 2911	Code of practice for design and construction of pile construction
4. IS 1893(1984)	Criteria for Earthquake Resistant Design of Structures
5. IS 875(1987)	Code of Practice for Design Loads
6. IS 800(1984)	Code of Practice for General Construction and Steel
7. IS 456(2000)	Code of Practice for Plain and Reinforced Concrete
8. IRC 21(1987)	Standard Specifications and Code of Practice for Road Bridges, Section III Cement Concrete Plain and Reinforced
9. IRC 22(1986)	Standard Specifications and Code of Practice for Road Bridges, Section VI Composite Construction for Road Bridges

10. SP 7 (1983) National Building Code of India 1983(2001)
11. SP 23(S&T) 1982 Handbook on Concrete Mixes
12. SP 24(S&T) 1983 Explanatory Handbook on Indian Standard Code for Plain and Reinforced Concrete
13. SP 34(S&T) 1987 Handbook on Concrete Reinforcement and Detailing

9.3. International Standards for Ports and Harbours

1. BS 6349 British Standard Code of Practice for Maritime Structures
   a.) Part 1 – 1984 General Criteria
   b.) Part 2 – 1988 Design of Quay Walls, Jetties and Dolphins
   c.) Part 3 – 1988 Design of Dry Docks, Locks, Slipways and Ship Building Berths, Ship Lifts and Dock and Lock Gates
   d.) Part 4 -1994 Design of Fendering and Mooring Systems
   e.) Part 5 – 1991 Code of Practice for Dredging and Land Reclamation
   f.) Part 6 – 1989 Design of Inshore Mooring and Floating Structures
   g.) Part 7 – 1991 Guide to the Design and Construction of Breakwaters
2. BS 8002 – Code of practice for Earth Retaining Structures.
2. EAU- 1996 Recommendations of the Committee for Waterfront Structures, issued by the (West German) Society for Harbour Engineering and the German Society for Soil Mechanics and Foundation Engineering VIIth English Edison
4. Technical Standards for Port and Harbour Facilities in Japan – 1980, The Overseas Coastal Area Development Institute of Japan
5. Manual on the Use of Rock in Coastal and Shoreline Engineering – 1991,
   a.) Construction Industry Research and Information Association Special Publication 83 (1991)
   b.) Centre for Civil Engineering Research and Codes CUR Report 154
6. British Ports Association (1983) – Design of Heavy Duty Pavements for Ports
7. British Pre Cast Concrete Federation Ltd., (1996) - Design of Heavy Duty Pavements for Ports and other Industries
8. U.S. Army Corps of Engineers (1984) Shore Protection Manual Volume I to III
9. Oil Companies International Marine Forum (OCIMF)- Guidelines and Recommendations for the Safe Mooring of Large Ships at Piers and Sea Islands
10. Louis Y Pouliquen(1970) – Risk Analysis in Project Appraisal IBRD

9.4. Electrical Equipments and Installations

The Standards / Guidelines issued by the following organisations may be followed:

1. NEC: National Electrical Code
2. NEMA: National Electrical Manufacturers Association

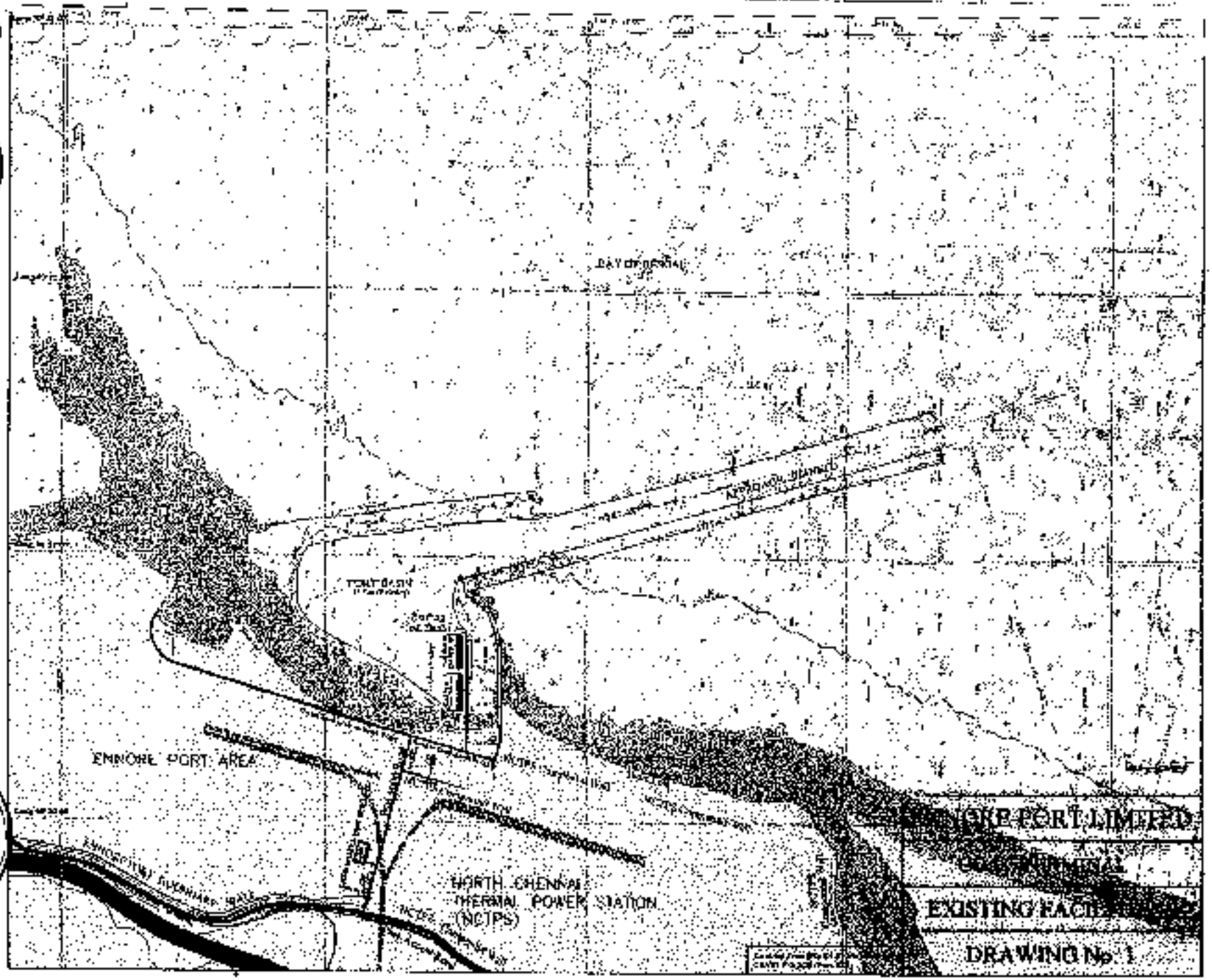
ENNORE PORT LIMITED

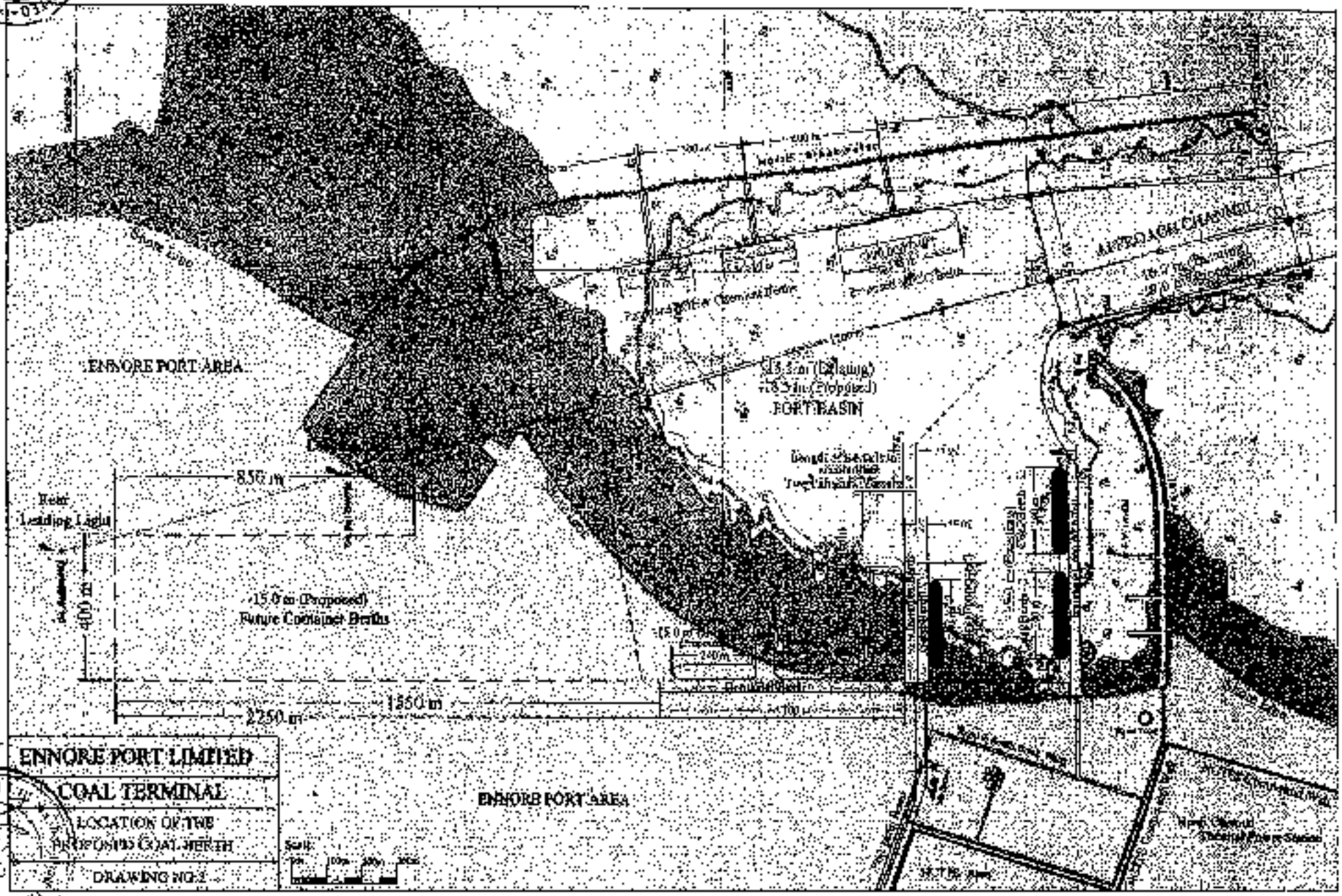
3. ANSI: American National Standard Institute
4. IEC: International Electro Technical Commission
5. IS: Indian Standard
6. API: American Petroleum Institute
7. Illumination Engineering Society Hand Book

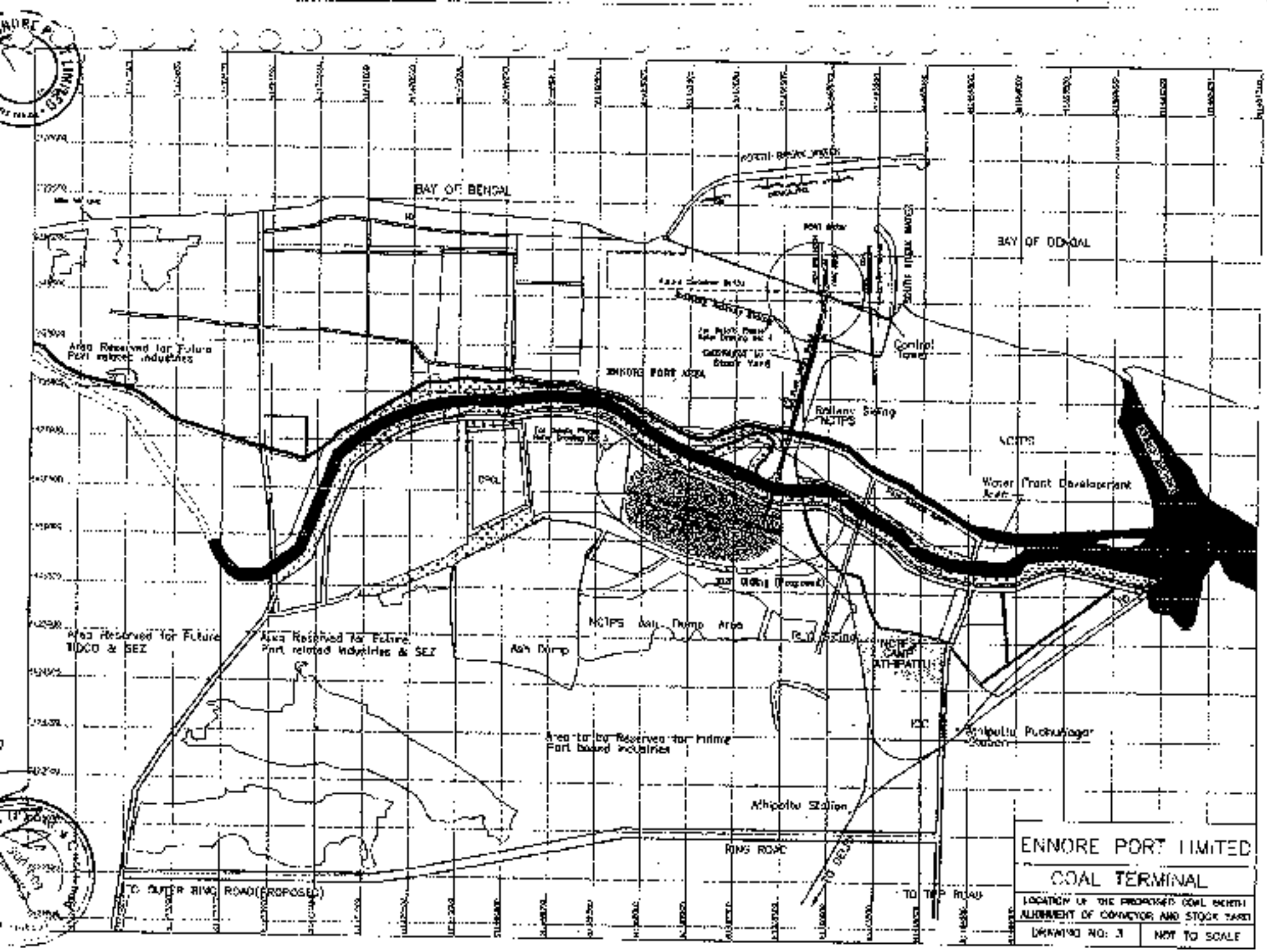
10. DRAWINGS

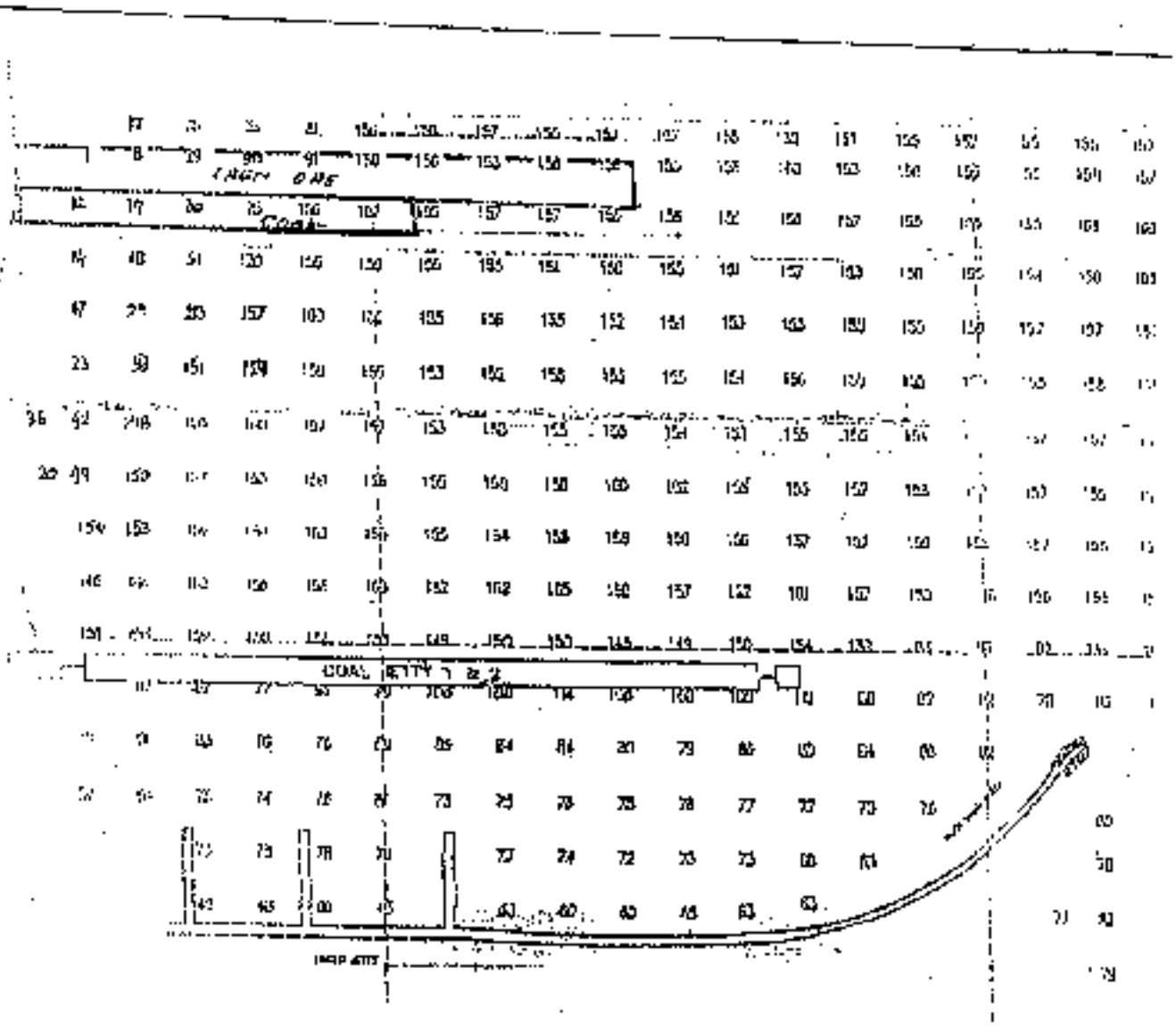
The following drawings are being provided with this document

1. Drawing No.1 – Existing Facilities
2. Drawing No.2 Location of the Proposed Coal Berth
3. Drawing No.3 – Location of the Proposed Coal Berth, Alignment of Conveyor and Stock Yard.
4. Drawing No.4 – Bathymetry in the Vicinity of the Coal Berth
5. Drawing No.5 – Layout of the Coal Berth and Conveyor Alignment
6. Drawing No.6- Typical Layout of the Proposed Coal and Iron Ore Stock Yards


ENNORE PORT AREA
NORTH CHENNAI
THERMAL POWER STATION
(NCTPS)
ENNORE PORT LIMITED
EXISTING FACI
DRAWING No. 1


ENNORE PORT AREA
ANNAMALAI CHANNEL
PORT BASIN
850 m
Rear Leading Light
400 m
15.0 m (Proposed)
Future Container Berths
1550 m
2250 m
ENNORE PORT LIMITED
COAL TERMINAL
LOCATION OF THE PROPOSED COAL BERTH
DRAWING NO:2
Scale:
ENNORE PORT AREA

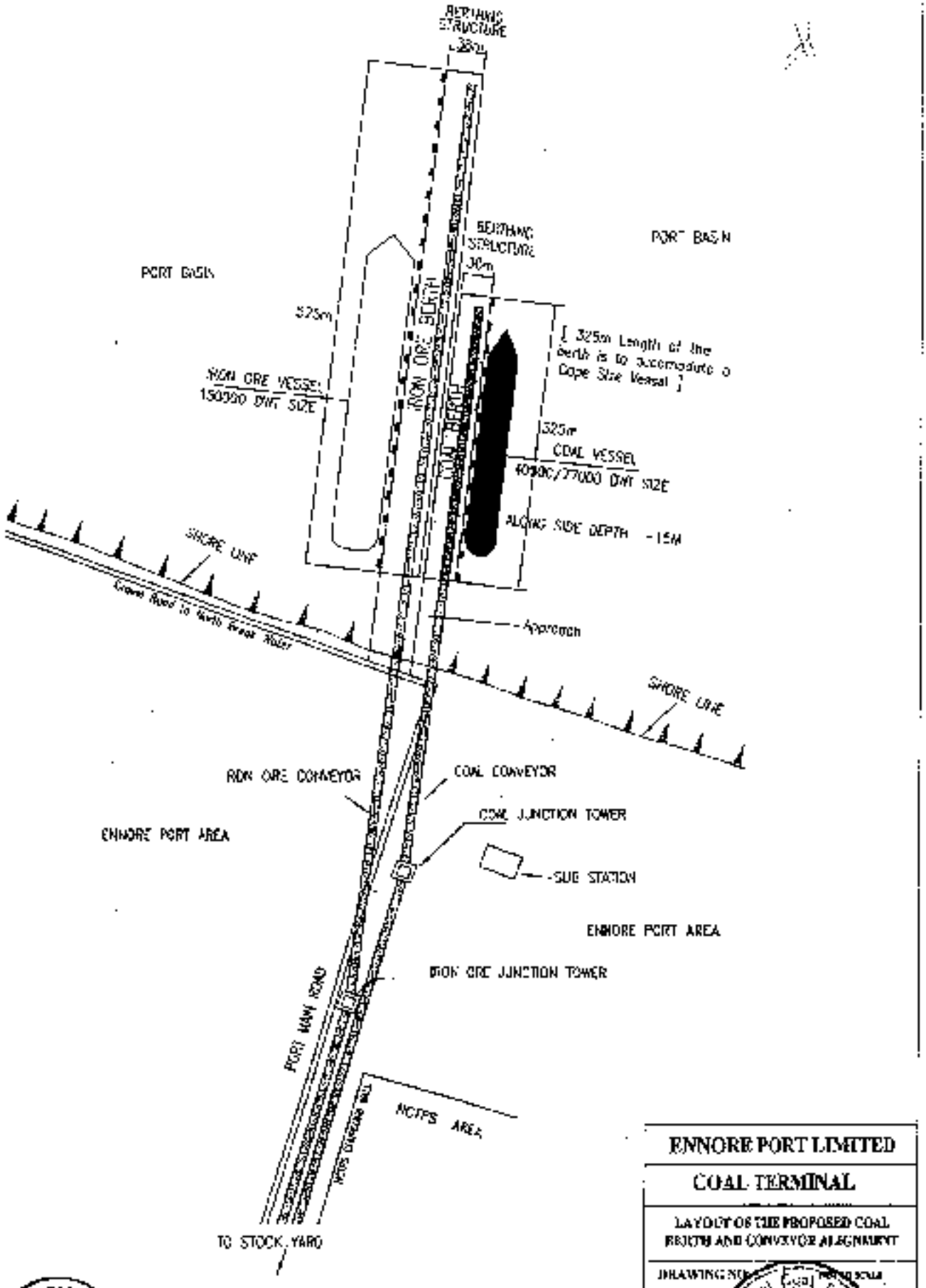

BAY OF BENGAL
BAY OF BENGAL
Area Reserved for Future Port related Industries
ENNORE PORT AREA
Control Tower
Reliance Siding NCTPS
NCTPS
Water Front Development
Area Reserved for Future TIDCO & SEZ
Area Reserved for Future Port related Industries & SEZ
NCTPS Ash Dump Area
Ash Dump
Area to be Reserved for Future Port based Industries
Athipattu Station
RING ROAD
TO OUTER RING ROAD(PROPOSED)
TO TIPP ROAD
ENNORE PORT LIMITED
COAL TERMINAL
LOCATION OF THE PROPOSED COAL BERTH ALIGNMENT OF CONVEYOR AND STOCK YARD
DRAWING NO: 3
NOT TO SCALE



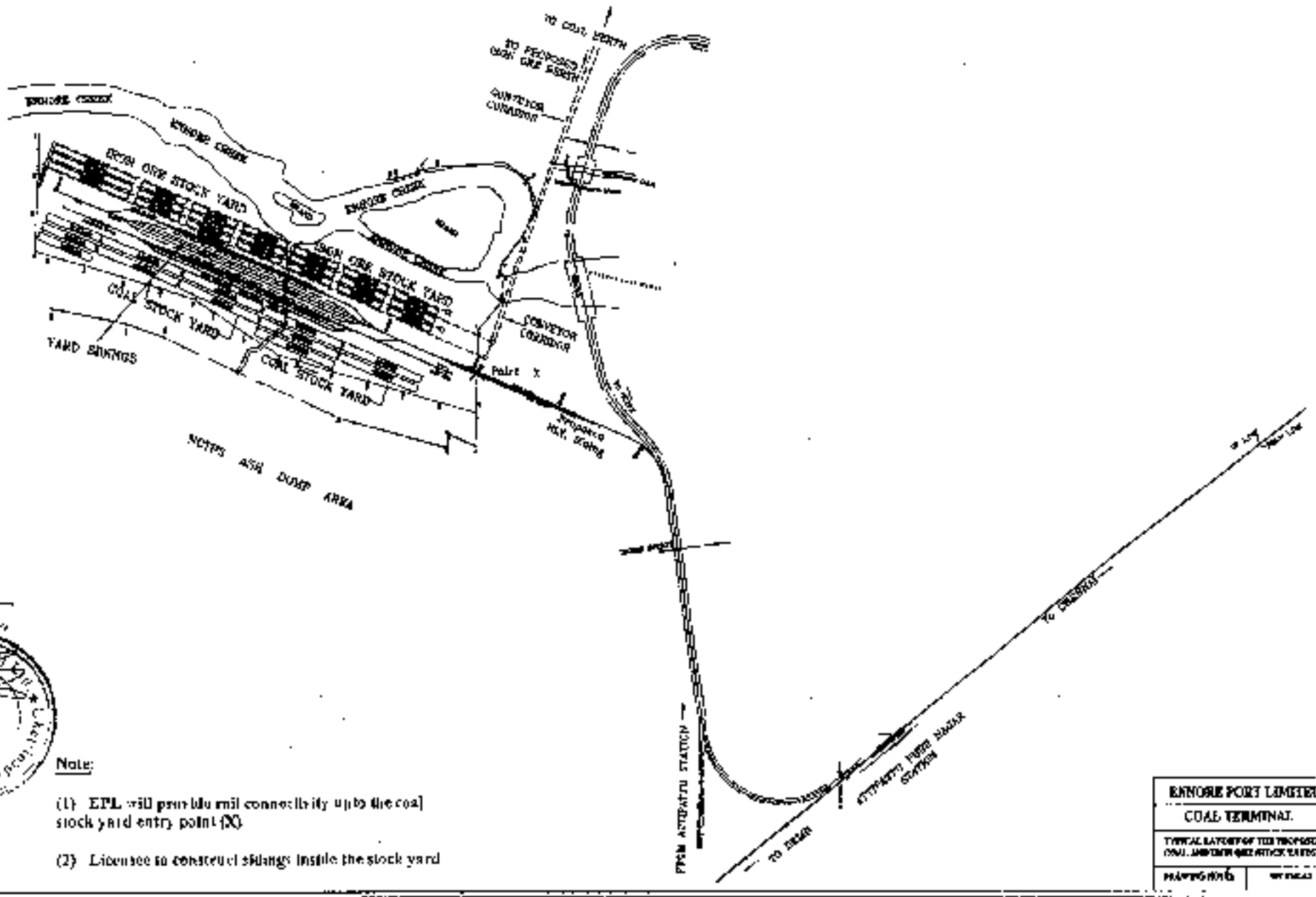
Note:

(1) The Spacing of sounding in both the directions are 50 m.
(2) Date of Survey: 30-10-2002

ENNORE PORT LIMITED	
COAL TERMINAL	
BATHYMETRY IN THE VICINITY OF THE COAL BERT	
DRAWING NO: 4	NOT TO SCA



ENNORE PORT LIMITED
COAL TERMINAL
LAYOUT OF THE PROPOSED COAL BERTH AND CONVEYOR ALIGNMENT
DRAWING NO.



Note:

(1) EPL will provide rail connectivity upto the coal stock yard entry point (X).

(2) Licensee to construct sidings inside the stock yard

LICENCE AGREEMENT
BETWEEN
KAMARAJAR PORT LIMITED
AND
SICAL IRON ORE TERMINALS LIMITED

MODIFICATION OF EXISTING IRON ORE TERMINAL
ON "AS IS WHERE IS" TO ALSO HANDLE COMMON USER COAL
AT KAMARAJAR PORT LIMITED
(ERSTWHILE ENNORE PORT LIMITED)
CHENNAI, INDIA
ON DBFOT BASIS

Agreement No. 20 8 2016 dated 11/07/2016

11TH JULY 2016

This document contains [109] pages

Kamarajar Port Limited Chennai

SICAL IRON ORE TERMINALS LIMITED CHENNAI

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

தமிழ்நாடு तमिलनाडु TAMILNADU BK 138504

Sical Iron Ore Terminals Ltd

NOOR AHMED - (STAMP VENDOR)
13, SINGANNA ST, CHENNAI - 600 001
LIC N . : 1145/A7/96
Ph : 24561 / Cell : 9840123800

THIS LICENCE AGREEMENT (the "Agreement") is made and entered into this 11th **day of July, 2016**

BETWEEN:

KAMARAJAR PORT LIMITED, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at 4th Floor, erstwhile DLB Building, Near Clive Battery Bus Stop, Rajaji Salai, Chennai– 600 001, hereinafter referred to as "the Licensor", (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the first part,

AND

SICAL IRON ORE TERMINALS LIMITED, a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at No.73 Armenian Street, Chennai – 600 001, hereinafter referred to as the "Licensee", or the "Company" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the second part;

Each of the Licensor and the Licensee shall be referred to herein as a 'Party' and collectively as 'Parties'.

WHEREAS:

(i) The Licensor, pursuant to a competitive bidding process, entered into a License Agreement with Sical Iron Ore Terminal Ltd ("**SIOTL**"), a Special Purpose Vehicle jointly promoted by Sical Logistics Ltd (89%) and L&T Infrastructure Development Projects Limited (L&T IDPL) (11%) in September 2006 for development of iron ore berth to handle capacity of 12 MMTPA ("**Iron Ore License Agreement**").

(ii) The aforementioned project was to be developed in 2 phases of 6 MMTPA each. Phase I of the project was constructed in November 2010.However, due to developments in the iron-ore sector, SIOTL could not complete the trial run and load test and could not commission the project and the project & facilities are since lying idle

(iii) In order to operationalize the terminal, SIOTL had submitted its technical and financial proposal to the Licensor in order to modify the existing project toalso handle common user coalupto12 MMTPA capacity at Kamarajar Port on DBFOT basis and the Licensor had pursuant to its board meeting dated June 9, 2015, issued an advertisement inviting Request for Qualification (RFQs) for identification of qualified developers who could match or better the proposal submitted by SIOTL to implement the such modification of the iron ore terminal;

(iv) Pursuant to the above and after evaluation of all bids received by the Licensor pursuant to issue of the Request for Proposal to qualified bidders, a letter of intent dated 2nd June 2016, has been issued to Sical Iron Ore Terminals Limited for grant of license for implementation of the Project and the Licensee has agreed to take over the facilities on an "as is where is" basis and undertake implementation of the Project thereon. KPL does not make any warranty regarding the condition and / or capacity of the existing iron ore facilities at the Terminal.

(v) The Licensee has, on and from the Zero Date agreed to extend the validity of the Proposal Security till such time a Construction Guarantee is furnished by the Licensee;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties hereto as follows:

1. Definition of terms

1.1. Defined terms

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

1. **"Agreement"** means this licence agreement, as amended, supplemented or modified from time to time in accordance with terms and conditions hereof.
2. **"Appendix"** means any of the schedules, supplements or documents, appended to this Agreement.
3. **"Applicable Laws"** means any statute, law, regulation, ordinance, rule, judgement, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Authority having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.
4. **"Applicable Permits"** means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.
5. **"Approved DPR"** means the detailed project report submitted by the Licensee to the Licensor and approved by the Independent Engineer for development of the Project, as per the provisions of Section 8.
6. **"Bid Submission Date"** means 20th January 2016.
7. **"Business Day"** means any day on which banks in Chennai are open for business.
8. **"Cargo Handling Charges"** shall include storage, handling charges, wharfage, stevedoring and other cargo related charges levied/leviable on cargo owners/consignors/consignees.
9. **"Change in Law"** shall have the meaning assigned thereto in Section 20.1.
10. **"Commercial Operations"** means commercial operations of the Project and Project Facilities to handle cargo on issue of Completion Certificate or on announcement of Date of Commercial Operations whichever is earlier.
11. **"Company Secretary"** means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980
12. **"Completion Certificate"** means the certificate to be issued by the Independent Engineer pursuant to Section 9.1 on completion of modification of the Terminal in accordance with the provisions of this Agreement.
13. **"Consortium"** means the consortium consisting of Sical Logistics Limited, L&T Infrastructure Development Projects Limited and MMTC Ltd formed pursuant to Memorandum of Association to implement the Project through the Project Company formed and incorporated by them in India.
14. "Consortium Member" shall mean any member of Consortium, but shall always include the members of the top-ranked technically evaluated responsive bidder based on whose credentials the Letter of Intent was issued by the Licensor. "Contracted Assets" means the assets listed in Appendix 16, exclusively, also forming a part of the Coal Terminal as per the Approved DPR and have been agreed upon by the Licensor for development during the Licence Period and such other assets as have been subsequently approved and included in the Approved DPR by the Licensor and the Licensee as a part of the - Terminal and as Contracted Assets in accordance with this Agreement.

Kamarajar Port Limited Chennai

SICAL LOGISTICS LIMITED ONE TERMINALS CHENNAI

15. **"Construction Guarantee"** shall have the meaning assigned thereto in Section 9.3.

16. **"Construction Phase/Construction Period"** shall have the meaning assigned thereto in Section 9.1.

17. **"Date of Award of Licence"** means the date of signing of this Agreement by both the Licensor & the Licensee.

18. **"Date of Commercial Operation"** means the date on which the Licensee commences commercial operations of the Project and Project Facilities in accordance with the provisions of this Licence Agreement including Section 14.1, which shall be no earlier than1st April 2016 and no later than 12 months from Zero Date.

19. **"Day"** means the twenty four (24) hour period beginning and ending at 00.00 hours midnight Indian Standard Time.

20. **"Debt Due"** means the following sums expressed in Indian Rupees outstanding and payable to the Lenders under the Financing Documents in respect of funds raised to finance the Project:

    The principal amount of the debt provided by the Lenders under the Financing Documents, which is outstanding on date of issue of Transfer Information Notice as per the payment schedule laid out in the Financing Documents approved by the Licensor and given in Appendix 11 but excluding:

    a) any amounts of debt provided by the Lenders in respect of working capital for the Project;
    b) any liabilities arising out of the security given for Financial Assistance
    c) any overdue payments of loan principal and interest, accumulated prior to the Termination Notice
    d) any consequential liabilities resulting from default under the Financing Documents, committed prior to the Termination Notice

21. **"Defaulting Party"** means a Party, which has committed a default of any of the terms and conditions of this Agreement and/or failed to discharge any of its obligations under this Agreement.

22. **"Deputy Conservator/Harbour Master"** means the Person designated as such for Kamarajar Port under the Indian Ports Act, 1908.

23. **Design and Drawings"** means the conceptual and detailed design and drawings, backup technical information required for the Project and all calculations, samples, patterns, models, specifications and other technical information submitted by the Licensee from time to time and approved by the Independent Engineer in accordance with the provisions of this Agreement.

24. **"Detailed Project Report/DPR"** means the detailed project report submitted by the Licensee to the Licensor for Project, as per the provisions of Section 8.

25. **"Developer"** means the Licensee.

26. **"Direct Political Force Majeure"** shall have the meaning assigned thereto in Section 21.2.3

27. **"Due Date"** shall mean the 5th day of every Month.

28. **"Encumbrance"** means any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, option, lien, charge, easement or encroachment, and any restriction on use, voting, transfer or receipt of income or, exercise of any other attribute of ownership;

29. **"Environmental Clearance"** means the one time in-principle initial clearance (if any), for the Project, from the Ministry of Environment and Forests, under relevant Applicable Laws, being obtained prior to the execution of the Project. It is clarified that Environmental Clearance shall not include any general environmental clearance(s) required during the execution of the Project.

30. **"Estimated Conversion Cost[1]"** means the further cost incurred by Licensee towards modification of the existing iron-ore terminal to also handle common user coal of 12 MMTPA capacity.

31. **"Expert Committee"** means the committee set up in accordance with Section 27.1.

32. **"Expert"** shall mean any person, body or organization with recognized specialist technical or professional expertise in respect of any field relevant for the purpose of this Agreement, to be appointed by the Parties by mutual consultation.

33. **"Final Compensation Payable"** means the compensation payable in accordance with Section 25.6.

34. **"Financial Assistance"** means all funded and non-funded financial assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

35. **"Financial Close"** means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Documents and receipt of commitments for the equity required for the Project.

36. **"Financing Documents"** means the documents executed by the Licensee in respect of Financial Assistance to be provided by the Lenders to the Project as amended, supplemented or modified from time to time, but excluding any documents executed by the Licensee/any other Person in respect of Financial Assistance used to finance the equity share/owners capital of any Consortium Member and/or any other shareholder in the Licensee.

37. **"Force Majeure Event"** shall have the meaning assigned thereto in Section 21.1 of this Agreement.

38. **"GoI"** means the Government of India

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

40. **"Government/Government Authority"** means the GoI, or any state government or any other statutory body or corporation, any department, authority, instrumentality agency, judicial body or tribunal of GoI, or any state government or any other statutory body or corporation having jurisdiction over the Licensee, the Licensed Premises, the Terminal or any portion thereof.

41. **"Gross Block"** means the gross book value as currently defined in AS-10, (or modifications or replacements to AS-10 as applicable from time to time) in accounting standards published by the Institute of Chartered Accountants of India.

42. **"Gross Revenues"** means the revenues calculated as provided for in Section 17III of this Agreement.

43. **"Guarantee"** means any valid bank guarantee furnished by the Licensee in favour of the Licensor as per the provisions of this Agreement, enforceable and encashable in Chennai Only.

44. **"Handover Date"** means the date on which a letter is issued by the Licensor, or the date indicated in this letter indicating that the Licensed Premises are handed over to the Licensee.

45. **"Handover" (other than SIOTL)** means the non-exclusive permission to enter upon, occupy and use Licensed Premises for the purpose of implementing the Project in accordance with this Agreement granted by the Licensor to the Licensee, and which shall be evidenced by a letter to be issued by the Licensor to the Licensee. It is clarified that Handover shall not create any

[1]Definition in lieu of Modification Cost

Kamarajar Port Limited Chennai

SIOTL IRON ORE TERMINAL LIMITED CHENNAI

proprietary interest in the Licensed Premises and the Licensor would reserve the right to enter upon and possess the said premises at any time.

46. **"Independent Engineer"** means the expert appointed for the Project in pursuance of Section 6

47. **"Indirect Indian Political Force Majeure"** shall have the meaning assigned thereto in Section 21.2.2

48. **"Initial Minimum Requirements"** means in respect to the Project, the minimum Terminal system design throughput of 12 MTPA, at the time of issue of Completion Certificate.

49. **"Kamarajar Port"** shall mean the major port of Kamarajar notified under the Indian Ports Act, 1908.

50. **"Landing and Shipping Place Declaration"** means a declaration by the Collector of Customs declaring the Project Facilities as a Landing and Shipping Place.

51. **"Lead Consortium Member"** means Sical Logistics Limited.

52. **"Lender"** means any Banks, Indian/Foreign financial institutions, non-banking finance companies and multilateral lending institutions engaged in the business of lending, providing debt to the Licensee in accordance with the normal and prudent business practices for the Project with whom the Licensee has executed Financing Documents. "Lenders" shall have an analogous meaning.

53. **"Lenders' Rights of Substitution"** shall have the meaning assigned thereto in Section 22.3.7.

54. **"Letter of Intent"** or "Letter of Award" means the letter as provided in the Appendix 1.

55. **"Licence Period"** means the period as provided in the Section 2.2.

56. **"Licence"** means the Licence granted by the Licensor to the Licensee in accordance with the provisions of Section 2.1 of this Agreement for implementing the Project and for providing the Project Facilities in accordance with the provisions of this Agreement.

57. **"Licensed Premises"** means the waterfront, and foreshore land provided by the Licensor to the Licensee as per Appendix 6 (and any further premises provided by the Licensor) under this Agreement and in which the Licensee is authorized to implement the Project in accordance with this Agreement

58. **"Licensee Event of Default"** shall have the meaning assigned thereto in Section 22.1.

59. **"Licensor Event of Default"** shall have the meaning assigned thereto in Section 22.2.

60. **"Material Adverse Effect"** means a material adverse effect on (a) the ability of the Licensee and/or the Licensor to observe and perform in a timely manner its obligations under this Agreement or any Transaction Document, (b) the ability of the Licensee and/or the Licensor to avail the benefits of the Licence in accordance with the terms of this Agreement and (c) the legality, validity, binding nature or enforceability of this Agreement or any other transaction document.

61. **"Maintenance Guarantee"** shall have the meaning assigned thereto in Section 18.2.13.

62. **"Minimum Annual Guaranteed Revenue"** means the minimum annual guaranteed revenue payable to the Licensor as provided in Appendix 18

63. **"Month"** means the calendar month or part thereof as per the Gregorian calendar.

64. **"Non-Defaulting Party"** means the Party, which has not committed a default of any of the terms and conditions of this Agreement.

65. **"Notice of Intent to Terminate"** shall have the meaning assigned thereto in Section 22.3.1.

66. **"Non Political Force Majeure"** shall have the meaning assigned thereto in Section 21.2.1.

67. **"Operations Phase"** means the period from the Date of Commercial Operation to the expiry/termination of the Licence Period.

68. **"Paid up Equity"** means the sum of par values of the ordinary shares subscribed and paid up in the authorised capital of the Licensee

69. **"Party"** means either the Licensor or the Licensee as the context may require or admit and "Parties" means both Licensor and Licensee.

70. **"Payment Guarantee"** shall have the meaning assigned thereto in Section 17.1.

71. **"Performance Guarantee"** shall mean the bank guarantee to be provided by the Licensee within 15 days ofexecution of this Agreement in the form prescribed in Appendix 2.

72. **"Person"** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or non-governmental authority or agency or any other legal entity or organisation.

73. **"Port"** means Kamarajar Port including the Project.

74. **"Project"** means the modification of the existing iron ore terminal on an "as is where is" condition, to also handle common user coal of at least 12 MMTPA capacity at the Port including design, engineering, financing, construction, operation, maintenance and marketing of the same as per the terms and conditions set out under this Agreement and the Bid Documents.

75. **"Project Company"** shall mean the Licensee.

76. **"Project Contracts"** means collectively this Agreement and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Licensee in connection with the Project and Project Facilities.

77. **"Project Cost"**[2] means the amount which shall comprise of sum of the approved existing project cost of Rs. 352.49 Crore (cost as per audited financials of SIOTL in FY 2011) plus Estimated Conversion Cost of Rs. 229.19 Crore

78. **"Project Facilities/Facilities"** means the facilities and services required as part of this Project and as set out in Appendix 7 and any other additional facilities and services to be provided by the Licensee during the Licence Period in accordance with this Agreement.

79. **"Project Schedule"** means the schedule of project implementation and time frame for activities, milestones and deadlines as set out in Approved DPR.

80. **"Regulatory Authority"** means any statutory or non-statutory body appointed for regulation of ports and has a mandate to regulate any aspects at Kamarajar Port.

81. **"Remedy Period"** means the period given to the defaulting Party for curing the default as per Section 22.3.3.

82. **"Request for Proposal (RFP)"** means the document that solicited proposals for this Project from eligible bidders.

83. **"Request for Qualification (RFQ)"** means the request for qualification document issued by the Licensor.

84. **"Revenue Share"** means the share of Gross Revenues to be paid by the Licensee to the Licensor based on the value as quoted in the commercial proposal of the Licensee, provided in Appendix 10.

85. **"Scale of Rates"** means the scale of rates announced and/or approved from time to time by the Licensor and/or notified by any statutory or other relevant body including the statement of terms and conditions thereof

[2] As per the extract of the board minutes dated June 9, 2015.

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86. **"Scheduled Date of Transfer"** shall mean the date of expiry of the Licence Period or the date of early termination in accordance with this Agreement.

87. **"Significant Consortium Member"** means the entities, which hold not less than 26% equity stake in the Licensee.

88. **"Statutory Auditor"** means the statutory auditor of the Licensee as defined under the Companies Act 1956.

89. **"Substitution Agreement"** means the agreement substantially in the form set out at Appendix 17, to be entered into between the Licensor, the Licensee and the Lenders

90. **"Terminal"** means the Licensed Premises, the berths, storage area, items of equipment, plant and any other facilities required to be created as per the provisions of Appendix 7 of this Agreement.

91. **"Termination Notice"** shall have the meaning specified in Section 22.3.5

92. **"Transaction Documents"** means collectively the Project Contracts and the Financing Documents.

93. **"Transfer Assets"** shall have the meaning set forth in Section 23 of this Agreement.

94. **"Transfer Information Notice"** shall have the meaning as defined in Section 22.3.6

95. **"Transfer Date"** means the date immediately following the date of expiry or termination as the case may be, of the Licence in accordance with the terms of this Agreement.

96. **"Vessel Related Charges"** means the charges levied on the vessels using the Port and the Project Facilities.

97. **"Year"** means the period of twelve months commencing from the Zero Date and every twelve month period thereafter, during the terms of this Agreement

98. **"Zero Date"** shall mean the date on which the Licensor and Licensee satisfy all the Condition Precedents as listed in Section 3 of this Licence Agreement

1.2. Other references

In this agreement:

1. **"CISF"** means Central Industrial Security Force.
2. **"m"** means Metre, the unit of length
3. **"sq m"** means Square Metre, the unit of area
4. **"km"** means Kilo Metre, the unit of length
5. **"T"** means Metric Tonne, the unit of weight
6. **"CD"** means Chart Datum at Kamarajar Port

1.3. Interpretations

I. This Agreement constitutes the entire understanding between the Parties regarding the Project.

II. If however as between the parties hereto there is any aspect related to this Project, which is not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the RFP issued by the Licensor, as amended, and all correspondences between the Parties till the Date of Award of Licence including the RFQ and the bid submitted by the Consortium in response to the RFP.

III. This Agreement cannot be changed, modified or supplemented in any way except by an instrument in writing executed by the Parties.

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IV. Any amendment, addition or variation to this Agreement shall be valid and binding, only if the same is mutually agreed upon by the Parties, executed in writing, and signed by the Licensor and the Licensee.

V. If, for any reason whatsoever, any part or parts of this Agreement shall be declared void or invalid by any competent arbitral tribunal or court or becomes voidable that shall not effect the other parts which shall remain valid and enforceable.

VI. Save as otherwise expressly provided, any reference in this Agreement to:

A. The words importing the singular shall mean the plural and vice-versa.

B. "Article" "Section" and "Appendix" shall refer, respectively to Articles, Section and Appendices of this Agreement. The Appendices to this Agreement shall form part of this Agreement and will be in force and effect as if the same were expressly set out in the body of this Agreement.

C. A time or time of Day shall be construed as a reference to Indian Standard Time.

D. The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.

E. Interest to be calculated and payable to the Licensor under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement.

F. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary english meaning.

G. References to construction include unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction

H. All payments due to the Licensor under this Agreement shall be payable by RTGS / demand draft / Cheque payable in Chennai and drawn on a scheduled commercial bank in favour of Licensor, unless otherwise approved of by the Licensor

I. All payments under this Agreement shall be governed by the Negotiable Instruments Act

J. Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer or any other Person shall be valid and effectual only if it is in writing and under the hands of the duly authorised representative of such Party or the Independent Engineer or Person as the case may be in this behalf and not otherwise

K. Unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Licensee to Licensor and/or the Independent Engineer shall be provided free of cost and in three copies and if the Licensor and/or the Independent Engineer are required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

L. Unless otherwise stated any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates

2. The Licence

2.1. Grant of Licence

In consideration of the Licensee agreeing to pay the Revenue Share and other payments under this Agreement as set out in Section 17 and subject to the provisions of this Agreement, the Licensor grants to the Licensee a licence (the **"Licence"**) to implement the Project and provide Project Facilities at the costs, charges and expenses of the Licensee within the Licensed Premises during the Licence Period in accordance with this Agreement.

In consideration of the Licensee agreeing to perform and discharge its obligations as set forth in this Agreement, the Licensor hereby grants to the Licensee, the right to enter upon, occupy

and use the Licensed Premises for the purpose of implementing the Project and to provide Project Facilities in accordance with this Agreement and as provided for in Section 4.5.

2.2. Licence Period

I. Unless, otherwise provided for and subject to Clause 3, the Licence granted herein will be for a period of 27 (Twenty Seven) Years (including the time taken for construction of the Terminal) from the Zero Date. (the "**Licence Period**").

II. Unless otherwise provided for the license granted under, this Agreement shall become effective on the Date of Award of Licence and shall, subject to termination under the provisions of this Agreement, be in force and effect until expiry of the Licence Period.

III. In the event of an early termination/determination of the Licence/ this Agreement by either Party in accordance with the provisions hereof, the Licence Period shall mean and be limited to the period commencing from the Zero Date and ending with the date of termination/determination/expiry of the Licence/this Agreement.

IV. On expiry/early termination/determination of the Licence Period, the Licence shall not be automatically renewed for a further period and the Project Facilities including the Terminal and Licensed Premises would revert back to the Licensor in accordance with the provisions of this Agreement.

V. This Licence does not bar the Licensee from participating in any subsequent bids invited by the Licensor for operation of the Terminal, after the Licence Period, subject to satisfactory performance by the Licensee during the Licence Period as appraised by the Licensor.

3. Conditions Precedent

i. Conditions precedent for the Licensor:

a) The Iron Ore License Agreement, and all documents ancillary thereto shall have been terminated with no liability on the Licensor;

b) The Environmental Clearance shall have been amended/re-granted in favor of the new Licensee for the amended scope of work set out hereunder.

ii. Conditions precedent for the Licensee:

The rights of the Licensee under this Agreement are subject to the satisfaction in full of the following conditions precedents to be fulfilled on or before Financial Close, unless any such condition has been waived by the Licensor fully or partially:

a) The Licensee shall have obtained, in its own name all such Applicable Permits other than the Environmental Clearance and such Applicable Permits are and shall be in full force and effect for the relevant period, viz. Construction Phase and Operations Phase during the subsistence of this Agreement

b) The Licensee shall have tied up all the debt required to meet the Estimated Conversion Cost and shall have achieved Financial Close;

c) Certified true copies of all Project Contracts, in particular the Financing Documents, EPC contracts, if any, as well as the shareholders funding agreement have been delivered by the Licensee to the Licensor

d) All of the representations and warranties as set forth in Section 4.8shall be true and correct as on the Date of Award of License and Financial Close

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e) The Licensor shall have received from the Licensee copies (certified as true copies by an authorized officer of the Licensee) of the constitutional documents of the Licensee

f) The Licensor shall have received copies (certified as true copies by the Directors of the Licensee) of all resolutions adopted by the Board of Directors of the Licensee authorizing the execution, delivery and performance by the Licensee of this Agreement and each of the Project Contracts

g) The Licensor shall have received from the legal counsel of the Licensee, a legal opinion with respect to the authority of the Licensee to enter into this Agreement and the Project Contracts and the Financing Documents and the enforcement of the provisions thereof

I. If the conditions precedent set forth in the Section 3 ii. have not been satisfied on or before 90 days from the date of award (i.e. the date of signing of this Agreement) or such extended period duly approved by the Licensor, and the Licensor has not waived, fully or partially, such conditions, the Licensor, notwithstanding anything contrary contained in this Agreement, shall be entitled to serve a Termination Notice without being liable to in any manner whatsoever to the Licensee and the Licensee shall forfeit all payments made and Guarantees provided to the Licensor, provided that where the Licensor does not fulfil its obligations under Section 3 i, the Licensor shall be entitled to serve a Termination Notice and the Performance Guarantee shall be released.

4. Covenants

4.1. Covenants of the Licensor

The Licensor shall grant peaceful possession of the Licensed Premises as stated in Section 4.6.

4.2. Covenants of the Licensee

I. The Licensee shall make all payments to the Licensor as per the provisions of this Agreement.

II. The Licensee shall perform its obligations under this Agreement in compliance with all Applicable Laws and Good Industry Practice.

4.3. Acceptance of the Licence

I. The Licensee hereby accepts the Licence and subject to the provisions of this Agreement, the Licensee shall at its costs, charges, expenses and risk including but not limited to foreign exchange risk if any, implement the Project and provide Project Facilities, in accordance with the provisions of this Agreement.

II. The Licensee hereby also agrees to transfer the Project Facilities to the Licensor as per the provisions of the Agreement.

4.4. Information about Licensed Premises

I. The information about the Licensed Premises is provided by the Licensor in good faith and with due regard to the matters for which such information is required by the Licensee. The Licensor agrees to provide to the Licensee, upon a reasonable request, any further information relating to the Licensed Premises, which the Licensor may now possess or may hereafter come to possess. Subject to this, the Licensor makes no representation and gives no warranty to the Licensee in respect of the condition of the Licensed Premises.

II. The Licensee agrees and confirms that it has thoroughly investigated and satisfied itself as to all general, local, marine, seawater, current, tidal waves conditions at the Licensed Premises and the areas and waters adjacent thereto including but not limited to topography, ground surface, sub-surface, seismic, shore, harbour, marine, seawater, seabed, hydrographic and bathymetric conditions and any other conditions, the nature and quantity of surface, subsurface

and marine materials or obstacles to be encountered, and equipment, machinery and materials required by the Licensee prior to and during the performance of the obligations hereunder.

III. If any defect, discrepancy, error or deficiency in the information supplied by the Licensor is noticed at any time during the Licence Period, no claim on this account will be entertained by the Licensor including claim for extension of time for completing construction of the Terminal, nor the Licensor shall in any way be responsible for any loss or damage, if any, caused to the Licensee as a result thereof.

IV. Notwithstanding anything contained herein, it is expressly clarified that:

a) The Licensee is responsible for checking and verifying the data, reports and other information about the Licensed Premises.

b) The said information is provided only for the convenience of the Licensee, the verification and interpretation of which is the sole responsibility of the Licensee.

c) The Licensor shall have no liability for adequacy, accuracy or completeness of such data and information.

d) The Licensee shall protect, indemnify and hold Licensor harmless for and against any and all losses arising directly or indirectly from or incurred by reason of the use of such data and information by any Person.

V. Licensee hereby waives any claims it may otherwise have against the Licensor in this regard or against any Person that has prepared, complied or provided any such data and information.

4.5. Acceptance of the Licensed Premises

I. The Licensor shall Handover the Licensed Premises to the Licensee as per the timeframe and description as stated in Appendix 5.

II. Subject to Section 111, the Licensee shall accept possession of the Licensed Premises on 'as is where is' basis

III. The Licensee shall be entitled to leasehold rights on the Licensed Premises during the Licence Period, only after Financial Close and subject to the terms and conditions as described elsewhere in this Agreement and in Appendix 14. It is expressly clarified that pending Financial Close, execution of a land licence agreement shall not be necessary for Handover and that the Handover does not entitle the Licensee to any leasehold rights on the Licensed Premises.

IV. In the case of failure of the Licensee to achieve Financial Close by **10th October 2016**, unless otherwise agreed upon by the Licensor, the permission granted to the Licensee to enter upon, occupy and use the Licensed Premises pursuant to Handover shall stand forthwith revoked.

V. Pending achievement of Financial Close, the Licensee shall, at its costs, charges and expenses, be entitled to make such development and improvements in the Licensed Premises as may be necessary or appropriate for implementing the Project provided always it is hereby mutually agreed as follows:

a) the Licensee shall not at any time put up any construction over the Licensed Premises subsequent to Handover, without the prior written permission of the Licensor.

b) If the Licensee puts up a construction without the written permission of the Licensor the construction so put up shall become the property of the Licensor

c) If the Licensor does not require the construction so put by the Licensee without the permission of the Licensor , the Licensee shall remove the construction at the Licensee's cost and restore the Licensed Premises in as good a condition it was at the time the Licensee was put in possession, within a reasonable time, during the currency of the

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Licence, failing which, the Licensor shall have the right to remove the construction at the cost and expense of the Licensee

d) In the event of resumption by the Licensor of any of the Licensed Premises on account of the early termination of the Licence and/or for national interest, the Licensor shall not be bound to pay any compensation whatsoever for repossession of the Licensed Premises including consequential possession of any development/construction on the Licensed Premises.

4.6. Peaceful Possession

Except as otherwise provided in this Agreement, the Licensor warrants that the Licensor shall not, disturb the peaceful possession and enjoyment of the Licensed Premises by the Licensee during the Licence Period, subject to complying with the terms and conditions of this Agreement. In the event the Licensee is obstructed by any person claiming any right, title or interest in or over the Licensed Premises or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any person claiming to have charge on the Licensed Premises or any part thereof, the Licensor shall, if called upon by the Licensee, defend such claims and proceedings unless such attachment, distraint, appointment of receiver or liquidator has not occurred due to any default by the Licensee under any contract or law applicable to the Licensee, and is not an outcome of the exercise of the Licensor's rights provided for herein.

4.7. Use of Licensed Premises

The Licensee shall not use the Licensed Premises for any purpose other than for the purposes of the Project and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Licensor in writing.

4.8. Representations and warranties

The Licensee hereby represents and warrants to the Licensor that as of the date hereof:

a) it has the power and authority and has taken all actions necessary to validly execute and deliver this Agreement;

b) its obligations under this Agreement will be legally valid and binding and enforceable against it;

c) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement;

d) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required under the terms of any covenant, agreement, 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 and does not result in a violation of any Applicable Law;

e) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any relevant authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;

f) it has complied with Applicable Law 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 has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

g) it is a private company limited by shares incorporated under the laws of India and has been properly constituted and is in continuous existence since incorporation;

h) it is not engaged in any business other than the business of operating and managing ports and other ancillary activities; and

i) the shareholding pattern of the Licensee is as follows:

Parties	Percentage of Issued and paid up share capital of the Company
Sical Logistics Limited	63%
MMTC	26%
L&T IDPL	11%

j) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement; and

k) no sums, in cash or kind, have been paid to, or accepted by, any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise for entering into this Agreement.

5. Zero Date for Licence Period

Subject to clause 3, The Licence Period shall commence from the Zero Date.

6. Independent Engineer

6.1. Duties of Independent Engineer

An Independent Engineer shall be appointed to carry out and perform the duties, services and responsibilities for the Project as described below and elsewhere in this Agreement.

I. Approval of Design and Drawings and report to the Licensor, any objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

II. Approval of DPR and report to the Licensor, objections or corrections required in order to implement the Project as per the provisions of this Agreement and Good Industry Practices.

III. Ensuring that the provisions of the Design and Drawings and the Approved DPR do not adversely obstruct any development plans of the Licensor, as and if provided by the Licensor at the time of approval of the Design and Drawings and the Approved DPR.

IV. Upon request of the Licensee on completion of construction of the Terminal, carry out inspections to ensure that the Terminal has been constructed as per the provisions of this Agreement and the Approved DPR, and issue the Completion Certificate to the Licensee.

6.2. Appointment of Independent Engineer

I. The Licensor shall within 30 Days from the date hereof or from the time both Parties decide to appoint an Independent Engineer submit to the Licensee a panel consisting of at least five (5) reputed consulting engineering organisations or body corporates having necessary expertise for appointment as the Independent Engineer, to undertake, perform, carry out the duties, responsibilities, services and activities for the Project set forth herein.

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II. The Licensee shall promptly and without delay and not later than 10 (ten) Days from the submission of the panel, propose to the Licensor in writing three (3) names from the panel for appointment as Independent Engineer.

III. The Licensor shall within 30 Days from the date of receipt of such notice, appoint the Independent Engineer, and communicate the same to the Licensee.

IV. In case the Licensee fails to provide such notice as set forth in Section 6.2II, then in such case, without prejudice to any other remedies and rights that the Licensor may have under this Agreement, the Licensor shall appoint the Independent Engineer from such panel and communicate the same to the Licensee.

V. The costs and expenses of the Independent Engineer shall be paid by the Licensor and Licensee equally .

VI. The Licensor may terminate the appointment of the Independent Engineer and appoint another Independent Engineer in its place in accordance with the provisions of this section or as may be mutually agreed

a) If the Licensor has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner

b) If the Independent Engineer resigns or notifies its intent not to continue as the Independent Engineer

VII. Initial term of the Independent Engineer will be 18 (Eighteen) Months from appointment, and extendable by the Licensor if the Licensor deems it necessary.

7. Designs & Drawings

7.1. Preparation of Design and Drawings

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the Design and Drawings for the Project. The Licensee shall ensure preparation of Design and Drawings through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as set out in Appendix 8 of this Agreement.

7.2. Review and approval of Design and Drawings

I. The Licensee shall submit the Design and Drawings for the Project in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor.

II. The Independent Engineer will review the Design and Drawings for the Project submitted by the Licensee inter-alia taking into account the comments and views of the Licensor and Good Industry Practice, and communicate its observations and objections to Licensee within 21 Days from the date of the receipt of such Design and Drawings and submit a copy to the Licensor.

III. Thereupon, the Licensee shall re-submit the Design and Drawings, after incorporating the changes, modifications or corrections suggested by the Independent Engineer, within 7 Days of receipt of the observations or objections of the Independent Engineer. It shall be binding on the Licensee to modify the Design and Drawings as per the observations of the Independent Engineer.

IV. The Independent Engineer shall communicate its approval within 7 Days of receipt of the revised Design and Drawings submitted to it by the Licensee to the Licensee and submit a copy to the Licensor.

V. The failure on the part of the Independent Engineer or the Licensor to object to the Design and Drawings shall not be construed as a waiver by the Licensor of any of its rights under this

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Agreement nor it shall in any way relieve and/or absolve the Licensee of its obligations and/or liabilities under this Agreement.

VI. The Licensee shall not be entitled to any extension of time for completing construction or to any other relief because of delay caused due to providing any clarification or in resubmitting the Design and Drawings.

VII. The Licensee shall not change any Design and Drawings approved or deemed to be approved by the Independent Engineer under this Agreement, without the prior written consent of the Independent Engineer and the Licensor. Provided that the Licensee may, for more efficient functioning of the Project Facilities and services propose to the Independent Engineer and the Licensor for their approval changes to the approved Designs and Drawings and specifications of any equipment consistent with all design standards applicable to the Project and the Applicable Laws. It is clarified for the avoidance of doubt that the Licensor shall not be obliged to approve such changes and no such change may be implemented without the prior written approval of the Licensor. The consequent cost and time impact in respect of the Project shall always be to the account of the Licensee.

VIII. Notwithstanding the express approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the Design and Drawings relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement.

IX. Any review of the Design and Drawings conducted by the Licensor/Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review; the Licensor/Independent Engineer does not accept any responsibility for the same.

X. The Licensee shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability, efficiency, safety and reliability of the Project or any part thereof and agrees to indemnify the Licensor as provided for in Section 19.7.

8. Approved DPR

8.1. Preparation of DPR for the Project

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the DPR of the Project within two Months from the Zero Date. The DPR shall contain a, traffic projections, conceptual design and layout, detailed cost estimates, year-wise capital expenditure schedule, land utilisation plan, list of Contracted Assets and other assets, sources of finance, financing mix, management structure, personnel required, environmental impact mitigation plans, maintenance schedule and plan, equipment replacement plan and any other details specified by the Licensor or the Independent Engineer and/or as required under this Agreement. The Licensee shall ensure preparation of DPR through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as set out in Appendix 8.

8.2. Review and approval of DPR

I. The Licensee shall submit the DPR in duplicate for approval to the Independent Engineer and also submit a copy to the Licensor.

II. The Independent Engineer will inter-alia taking into account the comments and views of the Licensor and Good Industry Practice, review the DPR submitted by the Licensee, and communicate its observations and objections to Licensee within 21 Days from the date of the receipt of such DPR and submit a copy to the Licensor.

III. Thereupon, the Licensee shall provide necessary clarification to the Independent Engineer and the Licensor and re-submit the DPR, after incorporating the changes, modifications or corrections suggested by the Independent Engineer, within 7 Days of receipt of the observations or objections of the Independent Engineer. It shall be binding on the Licensee to modify the DPR as per the observations of the Independent Engineer.

IV. The Independent Engineer shall communicate its approval within 7 Days of receipt of the revised DPR submitted to it by the Licensee to the Licensee and submit a copy to the Licensor.

V. The Licensee shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR.

VI. The Licensee shall not change any DPR approved or deemed to be approved by the Independent Engineer under this Agreement, except as provided in Section 9.7.

VII. Notwithstanding the express or deemed approval by the Independent Engineer and the Licensor, the Licensee shall be solely responsible for any defect and/or deficiency in the DPR relating to the Project or any part thereof and accordingly the Licensee shall at all times remain responsible for its obligations under this Agreement.

VIII. Any review of the DPR conducted by the Licensor/Independent Engineer is solely for the Licensor's satisfaction and that by conducting such review, the Licensor/Independent Engineer does not accept any responsibility for the same.

IX. The Licensee shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Licensor has accepted responsibility for the commercial aspects or the engineering or soundness of any work relating to the Project or part thereof carried out by the Licensee and the Licensee shall, subject to the provisions of this Agreement, be solely responsible for the commercial and technical feasibilities, operational capability, efficiency, safety and reliability of the Project or any part thereof and agrees to indemnify the Licensor as provided for in Section 19.7.

9. Construction Phase

9.1. Construction Period

The Licenseeshall promptly commence and complete the construction of the Terminal in accordance with the Project Schedule and obtain from the Independent Engineer, a certificate as to completion of construction of theProject in accordance with the provisions of this Agreement (the "**Completion Certificate**") not later than 12Months from Zero Date (the "**Construction Period**") or such extended period as approved by the Licensor.

9.2. Obligations of Licensee and Licensor

9.2.1. Licensee Obligations

The Licensee agrees and undertakes at its cost, charges and expenses to:

I. complete design, construction, erection, completion and construction of theProjectwithin 12months from thedate of approval of DPR by the Independent Engineer in accordance with the Approved DPR and Design & Drawings;

II. undertake, at its own cost, charges and expenses, the work such as realignment of roads, electric poles, lighting towers, buildings or any other structures within the Licensed Premises which may be required in connection with the Project;

III. keep valid the Construction Guarantee as per Section 9.3;

IV. obtain and maintain all Applicable Permits required for the Project except those expressly falling within the scope of Licensor's obligations.

V. entrust responsibility for project management and construction to professionally competent Persons;

VI. achieve Financial Close and make available in a timely manner all necessary financial and other resources required for implementation of the Project and provision of Project Facilities;

VII. comply with Applicable Laws including any obligations or duties mandated by any Applicable Permits including the Environment Clearance and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

VIII. provide to the representative(s) of the Licensor and/or the Independent Engineer, at reasonable times and upon prior intimation, access to the Project site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that failure on the part of the Licensor/Independent Engineer to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor/Independent Engineer nor shall the same be deemed to be waiver of any of the rights of the Licensor/Independent Engineer under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

IX. Provide to the Licensor and/or the Independent Engineer periodic status reports relating to the key milestones and obligations at the time and in the manner to be set out in the Approved DPR and in this Agreement.

X. promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure completion of construction of the Terminal in all respects in accordance with the provisions of this Agreement, without reference to the Licensor for making changes in the commercial or other terms of this Agreement.

XI. Within 90 days of the issue of Completion Certificate, the Licensee shall furnish to the Licensor 3 copies of the 'as built' Designs and Drawings duly vetted by the Independent Engineer reflecting the Project as actually designed, engineered and constructed, including without limitation an 'as built' survey illustrating the layout of the Project and setback lines, if any, of the building and structures forming part of the Project Facilities. The Licensee shall also provide the Licensor the total cost of construction of the Project with break-up of the cost of each asset constructed/purchased duly certified by Statutory Auditors and also provide all technical information including technical manuals.

9.2.2. Licensor Obligations

The Licensor agrees and undertakes to:

I. on a best endeavours basis, assist the Licensee at the Licensee's cost, in obtaining Applicable Permits required by the Licensee subject to the Licensee fulfilling the required conditions and requirements for grant of such Applicable Permits including

II. grant approvals/consents sought by the Licensee as required under this Agreement as lies within its power, with reasonable promptness, subject to the Licensee fulfilling all conditions and requirements for obtaining such approvals/consents.

III. The Licensor shall cause the Licensed Premises to be inspected by the Independent Engineer, upon intimation by the Licensee that the construction of the Terminal is complete and the Independent Engineer shall, upon satisfying itself as a result of such inspection that all construction has been completed in accordance with the approved DPR and Design and Drawings, and that the Project Facilities satisfies the Initial Minimum Requirements, issue the Completion Certificate.

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9.3. Construction Guarantee

I. The Licensee shall extend and furnish to the Licensor a valid bank guarantee of **Rs. 11.46 Crore**[3] (Rupees Eleven Crore and Forty Six Lakhs only) (the "Construction Guarantee") in favour of the Licensor enforceable and encashable at Chennai as per format in Appendix 9 from a scheduled bank acceptable to the Licensor no later than three (3) Business Days from the Zero Date and submit the same to the Licensor. The Construction Guarantee shall be valid from the date of this Agreement until issue of Completion Certificate.

II. Without prejudice to the obligation of the Licensee to complete the construction of the Project, as contained in Section 9.1hereto, in case of delays in completion of construction as per the provisions of Section 9.1&9.2, the Licensee agrees to compensate the Licensor at the rate of Rs. 6.37 Lakhs (Rupees Six Lakhs and Thirty Seven Thousand only) per Day for every Day of delay, or part thereof, payable on monthly basis, up to a period of 180 Days. The Licensor shall be entitled to recover such compensation through partial encashments of the Construction Guarantee.

III. Without prejudice to the obligation of the Licensee to complete the construction of the Project for any reason whatsoever as contained in Section 9.1 hereto, in case the delay in completion of construction, as per the provisions of Section 9.1 and 9.2, is more than 180 Days, the Licensor shall be entitled to encash the balance Construction Guarantee and terminate this Agreement, without prejudice to any other remedies and rights that the Licensor may have under this Agreement.

IV. The Parties agree that amounts described in Section 9.3I, II and III are a fair and reasonable estimate of the loss and damage likely to be suffered by the affected Licensor. The Parties expressly agree that such sums are not to be construed as penalty clause.

V. The decision of the Licensor as to any breach/delay having been committed, liability accrued, or loss or damage caused or suffered shall be conclusive, absolute and binding on the Licensee. The Licensee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Licensor under this Agreement is required to be provided in connection with any demand made by the Licensor to recover such compensation through encashment of the Construction Guarantee under this Agreement and that no document or any action shall be required other than the Licensors written demand as aforesaid.

9.4. Right to appoint contractors

The Licensee may engage any Person possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project Facilities provided that such engagement or appointment shall not relieve the Licensee of any of its obligations hereunder and the Licensee shall at all times be solely responsible for non performance or for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement.

9.5. Equipment and materials

The Licensee is free to plan all constructional activities and back-up facilities connected with the proposed Terminal within the Licensed Premises. The Licensee shall provide or cause to be provided at its own cost, all necessary equipment, raw materials and other items that may be required for the construction of either temporary or permanent nature.

[3] 5% of the Estimated Conversion Cost has been considered for Construction Guarantee

9.6. Project Schedule

The Licensee agrees and undertakes to perform its obligations under this Agreement in accordance with the Project Schedule set out in the Approved DPR.

9.7. Changes in Approved DPR and Design & Drawings

I. All construction shall be strictly in accordance with the Approved DPR and Design & Drawings. The Licensee shall intimate the Licensor in writing in case the Licensee proposes any material changes or deviations in the Approved DPR and Design & Drawings during any stages of development and construction or operation of the Project in the nature of:

A. changes in the physical structure that alters the basic design of the structure

B. variance in proposed quality standards/ specifications of assets

C. changes in the approved land use plan

D. changes in the schedule of construction and milestone dates

II. Any change proposed by the Licensee in the Approved DPR and Design & Drawings shall be subject to the approval of the Licensor.

III. Consequent adjustment to the milestones if requested by the Licensee shall be subject to the prior approval of the Licensor. The Licensee shall implement the approved changes in conformity with this Agreement.

9.8. Financial obligations of the Licensee

I. The Licensee shall implement the Project and provide Project Facilities entirely at its own costs, charges and expenses. Any increase in such costs, due to any reason whatsoever, including but not limited to cost overrun and/ or loss due to delayed construction and/or changes cost increases due to changes suggested by Independent Engineer and or Licensor, shall remain the sole responsibility of the Licensee. The Licensee agrees that this shall under no circumstances form the basis for any change or renegotiation in the commercial and or other terms of this Agreement with the Licensor

II. No extension of time for construction and commissioning of the Project due to delay in financing of the Project will be permitted by the Licensor except as approved by the Licensor and/ or if such delay is attributable to the Licensor's default.

9.9. No release

I. The Licensee agrees, declares and confirms that failure on the part of the Licensor to inspect any work

a) shall not amount to consent or approval by the Licensor nor the same shall be deemed to be waiver of any rights of the Licensor under this Agreement; and

b) shall not release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

II. The Licensor agrees that it shall not unreasonably delay or withhold any inspection requested by the Licensee for obtaining any approval and/ or consent of the Licensor required to be obtained under any provision of this Agreement.

10. Supply of power, water and other utilities

The Licensee shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the Project. The Licensee shall be liable for all payments to the concerned parties for power, water and other utilities required for the Project during Construction Phase and Operation Phase.

11. Provision of land

I. The Land already allotted to SIOTL shall be made available by the Licensor.

II. Further lands will be granted at the sole option of the Licensor, upon the Licensee's timely achievement of the development milestones specified in the Approved DPR, subject to the availability of land, extent of development and commercial exploitation of land in possession of Licensee and the land use plan as modified from time to time by the Licensor.

III. For avoidance of doubt it is hereby clarified that no compensation whatsoever will be payable to the Licensee, in case additional land cannot be provided by the Licensor for any reason

12. Dredging

I. The Licensor shall maintain the following depth from the Date of Commercial Operation of the conversion of Iron ore terminal into common user coal terminal.

a) -18 m[4] CD at the waterfront alongside berth

b) - 18.5 m CD at the basin

c) -19 m CD at the inner channel (entry to harbour)

d) – 20 m CD at the outer channel

II. The Licensor may consider further deepening of the waterfront along side the berth at the request of the Licensee for handling larger vessels, but is not obligated to do so. .

13. Provision of transport infrastructure

13.1. Railway infrastructure

13.1.1. Upto boundary limits

I. The Licensor has already provided a rail link upto the boundary limits of the stackyard in the Licensed Premises connecting to the nearest main line

13.1.2. Within boundary limits

I. The Licensor shall not be responsible for provisioning of any railway infrastructure within the boundary limits of the Licensed Premises.

II. The Licensee is permitted to construct, operate and maintain railway sidings within the boundary limits of the Licensed Premises and subject to Applicable Law, is hereby allowed full commercial freedom in levying and collecting user charges for the same.

III. The Licensee shall, at its cost, be liable to make arrangements with Indian Railways or any other agency for provision of rail transport services.

IV. The Licensee shall be responsible for relevant permits and approvals for construction, operations and maintenance of rail facilities within boundary limits.

13.2. Road infrastructure

13.2.1. Upto boundary limits

I. The Licensor has already provided a road access upto the boundary limits of the stackyard in the Licensed Premises.

[4]The current dredged depth is -15m which will be increased by KPL to -18m before commissioning of the Project.

13.2.2. Within Boundary Limits

I. The Licensor shall not be responsible for provisioning of any road infrastructure within the boundary limits of the Licensed Premises.

II. The Licensee is permitted to construct, operate and maintain road infrastructure within the boundary limits of the Licensed Premises and is allowed to charge tariffs, fees or levies for the same, as per applicable regulations

III. The Licensee shall be responsible for relevant permits and approvals for construction, operations and maintenance of road facilities within boundary limits.

14. Operation and maintenance

14.1. Date of Commercial Operations

I. During the Construction Phase, the Licensee may inform the Licensor that the Project Facilities are ready for a Landing and Shipping Place Declaration under Applicable Law.

II. On receipt of such communication, or the Completion Certificate, the Licensor shall be entitled to verify that the Licensee has constructed the Project and developed the Project Facilities in accordance with this Agreement.

III. The Licensor shall, if satisfied that the Licensee has constructed the Facilities in accordance with this Agreement, submit an application, within one week of the date of completion of the inspection, to the Customs Department for Landing and Shipping Place Declaration as per Applicable Law at the costs and expenses of the Licensee.

IV. The Licensor shall obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and services as ready for operation. The costs towards publication of the requisite notification will be borne by the Licensor.

V. The Licensee shall promptly declare the Date of Commercial Operation and commence operations after complying with all requisite statutory obligations and any other obligations under this Agreement;

VI. Commercial handling of cargo shall not be permitted at any time prior to the declared Date of Commercial Operations and any such handling will be treated as a Licensee Event of Default.

14.2. Obligations of the Licensee

In addition to any of its other obligations under this Agreement, the Licensee shall during the Operations Phase manage, operate and maintain the Project Facilities, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement and all Applicable Laws. The Licensee's obligations under this Section shall include but shall not be limited to the following:

14.2.1. Berth and Terminal operations

The Licensee shall:

I. promptly commence operations on the Date of Commercial Operation;

II. carry on business/commercial operation at the Project Facilities in a manner conducive to the interest of the Licensor, the trade and the country;

III. make efforts to maximise cargo handled so as to achieve optimal utilisation of the Project Facilities; provided that this provision shall not be construed as obliging the Licensee to adopt tariff discounting or rebating practices other than in the interest of optimising the Licensee' sustainable profitability in accordance with sound business practices.

IV. make available all necessary financial, technical, technological, managerial and other resources for the Project;

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V. make payments to the Licensor as per the provisions of this Agreement

VI. obtain approval of the regulatory body, as applicable, for the tariffs, charges and levies, where required under Applicable Laws;

VII. submit to the Licensor a copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

VIII. in case of changes in tariffs, levies or charges, submit to the Licensor an updated copy of the tariffs, charges and levies for various services and facilities including subcontracted services;

IX. except as provided for herein, manage and operate the Project Facilities on a common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;

X. ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and the revenue earned there from;

XI. comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour.

XII. fully observe and comply with the Scale of Rates and the statement of terms and conditions thereof as amended from time to time in respect of tariffs charges and levies charged by the Licensor

XIII. fully observe and comply with all the Provisions of the Indian Ports Act 1908 as amended from time to time bye-laws, rules and regulations made there under, any administrative or other directions and guidelines given under the said Act, guidelines on Land and Waterfront Management issued by any Government Authority from time to time, the Customs Act and all other statutory enactment in relation to the operations at the Project Facilities;

XIV. upon prior intimation by the Licensor, provide the authorised representatives of the Licensor access to the Project Facilities for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement.

14.2.2. Repairs and maintenance

I. The Licensee shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities or part thereof, which may be lost, damaged, or destroyed and regardless of whether such damage or destruction is partial or total.

II. The Licensee shall abide by the operations and maintenance plan ("Operations and Maintenance Plan") as outlined in the Approved DPR;

III. The Licensee shall maintain the Project Facilities in accordance with Good Industry Practices with the objective of providing adequate service standards and ensuring that the Project Facilities to be transferred to the Licensor on expiry of the Licence Period are in good condition, though normal wear and tear is excepted;

IV. The Licensee shall upon prior intimation by the Licensor, provide the authorised representatives of the Licensor access to the Project Facilities for inspection and review of Project Facilities, and/or the maintenance, repair, replacement or restoration work to enable the Licensor ascertain Licensee's compliance with any of the requirements under this Agreement and/or statutory obligations.

14.2.3. Removal/Replacement of assets

I. The Licensee shall at its cost plan for replacement of the equipment well ahead of the due dates therefor and replace the equipment as per the equipment replacement plan ("Equipment Replacement Plan") set out in the Approved DPR.

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II. The Licensee shall not, without the prior approval of the Licensor, remove or replace any assets comprised in the Project Facilities.

14.2.4. Accounts, auditing and reports

I. On or before the Due Date, the Licensee shall provide to the Licensor monthly reports on cargo traffic, vessel traffic, tariffs charged, turnaround time and any other information relating to operations, which the Licensor may reasonably require. The Licensee shall also produce necessary books of accounts, vouchers, and any other information to the Licensor or its nominees or representatives, required for assessing/evaluating the Revenue Share.

II. On or before the Due Date, the Licensee shall provide for the preceding Month a statement giving summarized ship/vessel/user-wise information on:

A. tonnage of cargo handled by category;

B. tariffs charged and the amount of rates received and all revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

C. Statement of all Gross Revenues accrued during the Month and the corresponding Revenue Share payment due to the Licensor, duly certified by the Licensee's representative, duly authorised for such purposes.

III. The Licensee shall during the subsistence of this Agreement, maintain full accounts of all revenue including other revenues derived/collected by it from and on account of use of the Project Facilities and shall provide

a) copies of half yearly accounts within 60 (sixty) Days of the end of the half year duly audited and certified by the Statutory Auditors of the Licensee and

b) in case of year end accounts, copies of audited annual accounts duly audited and certified by the Statutory Auditors of the Licensee under the Applicable Laws within 90 (ninety) Days of the close of each accounting period to which they pertain,

c) copies of the annual report including audited annual accounts duly certified by the Statutory Auditors of the Licensee under the Applicable Laws within 180 (one hundred and eighty) Days of the close of each accounting period to which they pertain,

IV. On or before the fifteenth Day of April each Year or fifteen Days from the close of the accounting period, whichever is earlier, the Licensee shall provide for the preceding accounting period a statement duly audited by its Statutory Auditors giving summarized ship/vessel/userwise information on:

A. tonnage of cargo handled by category;

B. tariffs charged and the amount of rates received and all revenues including other revenues derived from the Project Facilities offered and such other information as the Licensor may reasonably require;

C. Statement of all Gross Revenues accrued during the accounting period and the corresponding Revenue Share payment due to the Licensor, duly audited and certified by the Licensee's Statutory Auditor

D. Statutory Auditor's certificate that the Licensee has in place appropriate systems and procedures which are being followed for accounting revenues and these are not prejudicial to the interests of the Licensor under this Agreement

V. Notwithstanding anything to the contrary contained in this Agreement, the Licensor shall have the right to but not the obligation to appoint in the first instance at its cost another reputable firm of chartered accountants duly licensed to practice in India as the additional auditor (the "Additional Auditor") to audit and verify any or all matters, which the Statutory Auditors of the Licensee are required to do, undertake or certify pursuant to this Agreement including inter-alia revenues, expenses, costs, realisations and traffic.

VI. The Additional Auditor shall undertake audits at any time, with prior notice of at least 3 Days, at the sole discretion of the Licensor without any limit on the number of audits that may be undertaken.

VII. In the event of there being any difference between the findings of the Additional Auditor and the certification provided by the Statutory Auditor of the Licensee, such auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved as per the provisions of Dispute Resolution procedure set in Section 27.

VIII. Other assistance and interaction

a) The Licensee shall ensure un-hindered access and offer necessary co-operation to the Licensor and/or representatives for monitoring and inspection of operations.

b) The Licensor shall provide the Licensee with reasonable notice for such inspection and ensure that such inspection shall not interfere with the commercial operations of the Project.

c) The Licensor may station his representative in the Licensed Premises for providing data and reporting information to the Licensor. The Licensee shall provide appropriate office space and tele-communication facilities for such representative.

14.2.5. Employment of personnel

The Licensee shall employ qualified and skilled personnel required to operate the Project Facilities. The terms of employment may be as deemed fit by the Licensee and the Licensee shall bear all costs in this regard. All such employees shall always remain the Licensee's responsibility.

The Licensee shall indemnify the Licensor against any liability and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel during the Licence Period.

14.2.6. Responsibility of the personnel on expiry of the Licence Period

On expiry of Licence Period or early termination, as the case may be, all the employees of the Licensee shall remain Licensee's liability, in all respects, including payment of retrenchment compensation, if any, payable to them under the law for the time being in force. The Licensor shall in no way be responsible for their employment. The Licensee agrees to indemnify the Licensor against any claim made by the Licensee's employees against the Licensor in respect of their employment or as a consequence of the termination of their services by the Licensee.

14.2.7. Operating Procedure

I. The Licensee shall prepare and notify the procedure for operation and provision of services at the Terminal (the "Operating Procedure").

II. Any revision in the Operating Procedure shall be made after reasonable advance notice to the Licensor.

14.3. Rights of Licensee

14.3.1. Preferential and priority berthing/ousting

Berthing as far as practicable shall be on arriving priority. The Licensee may offer preferential or priority berthing/ousting to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities, provided the rules for the same, including payments if any in respect of such priorities are declared in advance to the Licensor and provided no waiting vessel is overlooked twice for such berthing priority. The Licensee shall also at all times comply with Government guidelines issued in this regard from time to time, and these

shall have the overriding priority. For avoidance of doubt, it is hereby clarified that the channel access shall always remain with the Licensor.

14.3.2. Unclaimed cargo

The Licensee:

I. shall at its cost, after obtaining prior written approval of the Commissioner of Customs and in accordance with other Applicable Laws, destroy or dispose of by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by the Licensee under or pursuant to this Agreement, and

II. shall at its cost, charges and expenses institute proceedings for recovery of unrealised charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Licensor agrees to provide all reasonable assistance necessary in this regard to the Licensee.

III. shall be solely responsible for the loss, destruction or deterioration of such unclaimed cargo that it has taken charge

14.3.3. Right to sub-contract

I. Notwithstanding anything contained in this section, the Licensee shall at no point in time sub-licence, sub-concession part of or the entire obligations under this Agreement

II. The Licensor may, for efficient use of the Terminal, grant approval to the Licensee to sub-contract certain operational function/ facilities and/ or maintenance of the Terminal or any part thereof. However grant of such approval shall not absolve the Licensee of any of its obligations and/ or liabilities under this Agreement and notwithstanding such approval the Licensee shall at all times remain responsible for its obligations under this Agreement.

III. Unless otherwise agreed to by the Licensor, sub-contracts, granted by the Licensee to third parties and long term commercial agreements entered into by the Licensee with third parties shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate at the end of the Licence Period.

IV. Unless otherwise agreed to by the Licensor, the Licensor shall not be liable for any costs whatsoever in relation to such sub-contracts and long term commercial agreements entered into by the Licensee with third parties and/or as a result of the expiry or termination of this Agreement.

14.4. Obligations of the Licensor

In addition to any of its other obligations in this Agreement, the Licensor shall arrange for and provide the following;

14.4.1. Marine and port services

The Licensor shall provide/ cause to provide the following services:

I. scheduling the entry, berthing and sailing of the vessels, bunkers and water supply to vessels and scheduling of pilotage and towage on a non-discriminatory basis subject to priority berthing norms set out in Section 14.3.1 and the sailing schedule as determined by the Deputy Conservator/Harbour Master of the Port depending on individual ship characteristics and safe navigational conditions. The Licensor shall be entitled to charge to the vessel owners/agents the tariffs, charges and levies for the services as per the Scale of Rates and statements of terms and conditions thereof;

II. maintenance of the depths in the channel, basin and alongside berth to suit vessels of 18.0 m depth;

III. waterside safety and safety of navigation;

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IV. carry out capital or maintenance dredging operations, if any, that may be required to ensure the depths to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities

V. provision and maintenance of all general port infrastructure covered under the Licence, necessary for management, operation and maintenance of the Project Facilities.

14.4.2. Breach of Licensor's obligations

In the event of the Licensor's failure / breach in meeting obligations in Section 14.4.1, the Licensee shall, without prejudice to any other right or remedy available to it, be compensated by the Licensor for direct cost incurred to rectify the failure, if any, suffered by the Licensee solely on account of such failure / breach and substantiated to the Licensor's satisfaction, by appropriate bills and proof of payments.

15. Ownership

15.1. Ownership of assets

15.1.1. Land and water area

The ownership of the Licensed Premises including all land, reclaimed area and water area shall remain with the Licensor and shall vest and/ or be deemed to vest with the Licensor at all times.

15.1.2. Assets created or provided by the Licensee

The ownership of all buildings, structures, berths, wharves, cargo handling equipment, other movable assets and other chattels situated on or about the Licensed Premises or relating to or connected with the Terminal, created or provided by the Licensee, shall, subject to the provisions of this Agreementincluding Section 3, remain with the Licensee during the Licence Period.

15.2. Entitlements of the Licensee

I. Within 45 Days from the Date of Award of Licence or such reasonable time as approved by Licensor, the Licensee shall execute hypothecation documents for creating a charge in favour of the Licensor for the assets created or provided by the Licensee referred to in Section 15.1.2 and shall duly register such charge as per the Applicable Laws.

II. The Licensee may hypothecate and/or create charge on and/or create other Encumbrances and/or mortgage the assets created or provided by the Licensee referred to in Section 15.1.2 for the limited purpose of offering such assets as collateral in favour of the Lenders for securing payments of interest/ repayments of principal of any loan advanced by such Lenders, subject to execution of appropriate documentation and the prior approval of the Licensor. Provided any such charge shall rank pari passu with charge of the Licensor over the said assets for recovering any amounts in respect of Revenue Share or any other payments or claims outstanding to the Licensor.

III. Provided any hypothecation and/or charge and/or other Encumbrances and/or mortgage created by the Licensee beyond the Licence Period shall be null and void and shall not be binding on the Licensor and the said charge shall stand extinguished upon payment of Final Compensation Payable to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

IV. Unless otherwise specified, the Licensee shall provide the Licensor on an annual basis at the end of every financial year, on or before Due Date of the following Month, the copy of the register of charges of the Licensee duly certified and authenticated against the registrar's records, by a practising Company Secretary.

V. Unless otherwise agreed to and approved by the Licensor, the Financing Documents shall not be inconsistent with the provisions of this Section 15.2 and other terms and conditions of this Agreement.

VI. The Licensor shall not enter into any direct agreement with the Lender for this Project for the purpose of securing the entitlements of Licensee and/or the Lenders.

VII. The Licensee shall ensure that sub-contractors of the Licensee shall not mortgage and/or create any charge on the assets or the Licensed Premises and the waterfront on which such assets are situated without the prior written permission of the Licensor.

16. Tariff setting

I. The Licensor shall render all vessel related services and shall collect port dues, pilotage fees and shifting charges, and any other Vessel Related Charges except berth hire charges for the berth built by the Licensee, as per the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time directly from the ship's agents/users for use of the Terminal. It is hereby clarified that the Licensor shall set tariffs from time to time for all services rendered and facilities provided by the Licensor without reference to the Licensee.

II. The Licensee is free to fix and collect from users, the rates and user charges for the provision of the Project Facilities, including berth hire charges for the berth built by the Licensee, Cargo Handling Charges and other charges at the Terminal for cargo handling facilities and services in respect of all permitted cargoes under the Agreement, but subject to the approval by the Regulatory Authority or any other Person, if any, appointed by the Government from time to time. Any future regulation relating to any rates, charges and tariffs would have to be adhered to by the Licensee, if applicable and would not be tantamount to Change in Law.

III. A comprehensive schedule of all rates and user charges for the Project Facilities and the time period from which such rates and user charges including the terms and conditions thereof, shall be in effect, shall be notified to the public by the Licensee.

IV. Every fixation and revision in such rates and user charges including the terms and conditions thereof shall be intimated to the Licensor and notified at the Port at least a Month before the fixation and revisions come into effect.

V. Such rates and user charges including the terms and conditions thereof and any revisions thereof shall be the "Published Tariff".

VI. All such tariffs, rates and user charges shall be denominated in US Dollars and/or Indian Rupee

VII. The Licensee shall be free to give discounts in tariff and any other rates and user charges, including separate service and tariff packages for specific users. Such customization may include long-term contracts with large and/or dedicated users. However, such discounts shall be given by the Licensee only in respect of the tariffs, rates and user charges due and payable by the users, consignees/ owners or vessel owners/ agents to the Licensee and not in respect of the tariff and any other charges payable by such Persons to the Licensor.

VIII. For the purpose of calculating Gross Revenue and Revenue Share payable, the maximum among the following shall be taken:

A. the actual charges levied by the Licensee or its sub-contractors for the services provided within the scope of this Agreement

B. the tariff specified by the Regulatory Authority or any other statutory body or any other appropriate Person as per the Applicable Law

C. the Published Tariffs as applicable and revised from time to time

Irrespective of the actual cargo handled, the Licensee shall pay the Minimum Annual Guaranteed Revenue to the Licensor as provided in Appendix 18.

IX. Any discounts/rebates/concessions in tariffs, rates and user charges shall not affect the Revenue Share payable to the Licensor and the revenues accrued to the Licensee shall be grossed up by such discounts/rebates/concessions for calculation of Gross Revenues.

16.1. Regulation and review

The Licensee may at any time, apply for revision of tariff to be charged and recovered by it to the Regulatory Authority or any other appropriate Person as per the Applicable Laws from time to time.

16.2. Traffic projections

The Licensee shall submit annual and monthly traffic projections to the Licensor at the start of each year. The Licensee shall submit monthly and annual traffic reports and annual variance of actual traffic against annual projections and estimates envisaged in the Approved DPR.

17. Payments to the Licensor

The Licensee shall pay to the Licensor by account payee cheques payable in Chennai, drawn on a scheduled commercial bank acceptable to the Licensor, or any other mode acceptable to Licensor the following amounts:

I. On an annual basis, from the day the Licensee first provides cargo handling services to users of the Terminal (which may be before the Date of Commercial Operation) or from the Date of Commercial Operation, whichever is earlier, the Licensee shall be liable to pay the Revenue Share to the Licensor This amount shall be payable in monthly instalments in the manner provided in Sections 17II, III and IV below.

II. On or before the Due Date, the Licensee shall pay Revenue Share for the previous Month's throughput as per the provisions of the Negotiable Instruments Act. Such Revenue Share shall be the amount equal to product of the value quoted in the commercial proposal of the Licensee, provided in Appendix 10 and the Gross Revenues accrued for the Month to the Licensee as a result of operations of the Project and Project Facilities based on Section 14.2.4II

III. The Gross Revenue accrued shall be calculated as provided for in Section 16VIII and IX and shall be aggregate of the following revenues whether or not such revenues are actually realized from consignees/agents/customers:

a) all the gross revenues accruing to the Licensee for the services rendered and facilities provided by the Licensee including revenues accruing from berth hire charges for the berth built by the Licensee.

b) all the gross revenues accruing to the Licensee from handling, wharfage, stevedoring, storage and movement of cargo including transhipment

c) all the gross revenues accruing to the Licensee from shifting of cargo within the Terminal for inspection, processing, storage or loading/unloading

d) all the gross revenues and income from storage charges and demurrage/detention charges

e) all the gross revenues and income from miscellaneous services offered and facilities provided within the Terminal

f) all other gross revenues and income from charges not specified above, if any, for handling, storage and movement of cargo within the Terminal

g) any other gross revenues and income earned by the Licensee not specified above and directly attributable to the Project and Project Facilities, provided that any income earned

from investing surplus funds and from investments not directly related to the Project would be excluded from the computation of accrued revenue.

IV. All Revenue Share payments payable by the Licensee shall be payable in Indian Rupees, such that the currency of invoice raised on the users of the Terminal is converted at the prevalent SBI TT rate on the last working day of that Month for which such Revenue Share payments are due.

V. From the Handover Date of the Licensed Premises, till achievement of Financial Close, for every Month, on or before the Due Date for the Month, the Licensee shall be liable to pay the Licensor, land licence fee for the Licensed Premises, calculated at the rate of Rs 145.53/- per annum or part thereof per square meter or part thereof

VI. Upon the achievement of Financial Close, no land licence fee shall be payable and instead advance rent for a term of 12 Months, shall be payable from such date for every Year, in accordance with the terms and conditions of the lease specified in Appendix 14. The Licensee shall make payment of such advance rent for the first 12 Month term within three (3) Business Days of Financial Close and thereafter for additional terms of 12 Months, three (3) Business Days prior to the expiry of the previous 12 Month term. The term of the lease shall run concurrently with this Agreement and shall terminate on the termination of this Agreement.

VII. The Licensee and/or the users of the Terminal shall pay to the Licensor on or before the Due Date for the previous Months throughput, way leave charges as specified below, which shall be escalated at 30% after every five (5) years.

a) For right of way along conveyor corridor: Rs 1 per metric tonne handled at the Terminal

VIII. The Licensee shall also pay rent or other charges for the additional land or other premises or additional utilities or services, made available by the Licensor to the Licensee in accordance with the prevailing Port's Scale of Rates and the statement of terms and conditions thereof, effective from time to time.

VIII a In respect of all of the payments to the Licensor, all taxes other than Income Tax payable by the Licensor, shall be borne by the Licensee.

17.1. Payment Guarantee

I. As security for payment of the Revenue Share and all other claims and payments due and payable to the Licensor under this Agreement, the Licensee shall execute and keep in force throughout the Operations Phase, a bank guarantee (the "Payment Guarantee") enforceable and encashable at Chennai from a scheduled bank acceptable to the Licensor (on or before the Date of Commercial Operations) in favour of the Licensor. The Payment Guarantee shall be kept valid at all times until the expiry of the Licence Period.

II. The value of the Payment Guarantee for the first 180 Days of Commercial Operations shall be equal to Rs.10.05 Crore[5] (Rupees Ten Crore and Five Lakhs only).

III. Thereafter the Payment Guarantee amount shall be equal to the greater of Rs. 10.05 Crore (Rupees Ten Croreand Five Lakhs only) and the previous six Months Revenue Share calculated as the sum of the payments for each Month computed as per Section 17II for the previous six Months, such that US Dollar denominated payments shall be converted to equivalent Indian Rupees based on the prevailing SBI TT rate on the last working day of the respective Month

[5] Payment Guarantee shall be equal to the Minimum Annual Guaranteed Revenue applicable during the first year of operations of the Project

17.2. Failure to pay

I. The Payment Guarantee may be invoked at any time after the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor remain unpaid. Within 10 Days of such invocation of Payment Guarantee, the Licensee shall replenish the Payment Guarantee.

II. Non-provision/non-validity and/or non-replenishment of the Payment Guarantee by the Licensee shall entitle the Licensor to invoke and encash the entire balance amount of the Payment Guarantee and such default shall be considered a Licensee Event of Default.

III. The Licensor shall levy simple interest at the rate of 15% per annum to the Licensee on every delayed payment of the Revenue Share or any other dues/ payment to be made by the Licensee to the Licensor, provided such delayed payment shall not be allowed by the Licensor for a period exceeding three Months. In case of delay beyond three Months, Licensor shall treat such event as a Licensee Event of Default. The interest shall be charged from the date on which such amount becomes due and payable to the Licensor under this Agreement,till the date of actual payment.

18. General obligations

18.1. Obligations of the Licensor

18.1.1. Assistance for approvals, permits, licenses and clearances

The Licensor shall at the request and costs, charges and expenses of the Licensee do all such acts, deeds and things that the Licensee may require to be done jointly or individually with respect to any applications or clearances (including the Environmental Clearance) sought and/or received from any authority for any issues pertaining to the Project, the requirements of the Licensor becoming necessary or essential by virtue of its ownership of land and water. The Licensor's obligation under this Section 18.1.1 shall not relieve the Licensee of its obligation under this Agreement to obtain and renew the Applicable Permits. It is clarified that the primary obligation to apply and obtain all Applicable Permits shall rest with the Licensee, including in cases where applications for Applicable Permits are required to be made in the name of the Licensor, in which event the Licensor's obligation shall be restricted to rubber-stamping the said applications.

18.1.2. Non-Interference

Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the designing, engineering, financing, construction, operation, maintenance and marketing of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal.

18.1.3. Exclusivity rights

No Exclusivity rights are envisaged for the Licensee

18.2. Obligations of the Licensee

18.2.1. Safety and security measures

I. The Licensee shall give priority to safety in its planning, development, construction, and operations of the Terminal in order to protect life, health, property and environment.

II. The Licensee shall follow all safety norms as prescribed by the competent authority.

III. The Licensee shall within 24 hours of the occurrence of any accidents at or about the Terminal or in connection with the execution of the work including its employees / workmen shall report such accidents to the Licensor. The Licensee shall also report such accidents to the competent

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authorities such as Labour Department (Regional Labour Commissioner), Police Department, Harbour Master, and other relevant authorities, etc. to whom such report is required to be legally submitted.

IV. The Licensor's Port is an area with restricted entry. The entry / exit of materials and personnel of the Licensee and their passage within the Port area is subject to the Port's safety and security regulations as in force from time to time.

V. The Licensee at its cost may make his own arrangements for security in the Licensed Premises provided the Licensee shall abide by the security regulations/ procedures prescribed by the Licensor from time to time. However, the overall security of the Port property shall be the responsibility of the Licensor.

18.2.2. Corporate Structure:

I. The Licensee shall ensure that,

a) the aggregate ultimate beneficial ownership of equity shareholding of the Consortium Members in the Licensee, whether direct or indirect will at no point in time be less than 51% till the issue of Completion Certificate.

b) Sical Logistics Limited, the Lead Consortium Member (LCM), whose financial strengths were credited during the bid process, shall be the single largest shareholder in the Licensee and shall hold an ultimate beneficial ownership of equity stake of not less than 26% in the Licensee at least for a period of 5 calendar years from the Date of Commercial Operations.

c) the ultimate beneficial ownership of equity shareholding in the Licensee of the Consortium Members, whose strengths were credited during the bid process will at no point in time be less than 51% till at least 5 calendar years from the Date of Commercial Operations.

II. Any change in direct or indirect beneficial ownership of equity of such a Lead Consortium Member, Significant Consortium Member, or Consortium Member, or the making of a public issue of the Licensee's shares or a change of control over such Person shall be communicated to the Licensor in writing for its prior approval, [which shall not be unreasonably withheld; such approval may be withheld on account of security clearance for the new owner of equity being rejected by any Government Authority]. The Licensor shall reserve the right to disallow changes in Consortium structure, if in its sole opinion it adversely affects the strengths of the Licensee (the Consortium) as originally evaluated. Any such change without Licensor's prior approval shall constitute a Licensee Event of Default.

III. The Licensee shall ensure that

a) its articles of association ("Articles") adequately reflect the relevant commitments, obligations and responsibilities of the Consortium as contained in the MoU, the bid documents and as envisaged in this Agreement.

b) in particular, the Articles of the Licensee shall be amended within forty-five (45) days from the date hereof to include:

i) terms and conditions regarding the composition of share-holding stipulated in this Agreement; and

ii) terms and conditions related to changes in the share-holding pattern stipulated in this Agreement;

and the Licensee shall submit the amended Articles to the Licensor upon amendment.

c) Any subsequent change in the Articles which alter the provisions required by this sub-clause shall require the prior approval of the Licensor.

IV. The Licensee shall provide on an annual basis to the Licensor, a certificate of the Licensee's compliance with the provisions of Section 18.2.2 and this shall be issued by a practising Company Secretary.

18.2.3. Submission of Financing Documents

I. The Licensee shall submit the Financing Documents, if any, from time to time for the approval of the Licensor.

II. The Licensee shall ensure that the Financing Documents obligate the Lenders to promptly notify the Licensor of Event of Default by the Licensee under the Financing Documents.

III. The Licensor shall review the Financing Documents submitted by the Licensee, and communicate its approval to the Licensee within forty-five Days from the date of the receipt of such Financing Documents.

IV. In the event that the Licensor has any objection to the financing structure or Financing Documents or sources of finance it shall promptly and without any undue delay notify the Licensee its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Licensee shall provide necessary clarification to the Licensor and/ or re-submit the Financing Documents as the case may be, after incorporating the changes, modifications or corrections suggested.

V. If the Licensor does not object to the financing structure or Financing Documents submitted to it by the Licensee within Forty-Five Days of submission, the Licensor shall be deemed to have approved such financing structure and the Financing Documents.

VI. Where consideration payable to the Licensee on termination is based on debt and/or equity, only the sources of funding and repayment schedule ("Original Schedule") as approved by the Licensor and as appended in Appendix 11 would be considered in estimation of such compensation.

18.2.4. Environmental protection

I. The Licensee shall be fully responsible to ensure that the environment in general, and the water area in particular, is not polluted due to the operations of the Terminal. All Applicable Laws and Applicable Permits in this connection shall be fully adhered to by the Licensee as per Good Industry Practices including any obligations or duties mandated by the Environment Clearance. The Licensee shall give clear indications about the disposal arrangements for chemical wastes and other wastes at the stage of approval of layout drawings etc. The Licensee shall be solely responsible to obtain all statutory clearances as may be required by law, save and except for the Environmental Clearance, which shall be obtained by the Licensor.

II. The Licensor will provide assistance to the extent possible in this regard. However, this will not be obligatory on the Licensor, and the Licensee shall take full responsibility for obtaining the necessary clearance. The Licensee agrees and undertakes to comply with all regulations and directives concerning occupational hazards as issued by the Licensor and relevant authorities from time to time. The Licensee shall keep the Licensor informed by sending a copy of the clearances obtained from time to time.

18.2.5. Permits

The Licensee shall at all time maintain valid Applicable Permits that may be required for construction and operation of the Terminal. The Licensee at its cost shall obtain such Applicable Permits from the concerned Government Authority.

18.2.6. Cargo Restrictions

This Licensee shall ensure that except for coal(Non TANGEDCO or its associates / SPV / JV),iron ore and project cargoes required for the construction of the Terminal, no other liquid cargo and / or dry cargo and / or containers is handled at the Terminal.

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18.2.7. Insurance

In addition to the insurances required under the Financing Documents, the Licensee shall, at its cost and expense, purchase and maintain during the Licence Period such insurances as are customary, from highly rated insurance carriers acceptable to Licensor, including but not limited to the following:

18.2.7.1. Construction Phase

Prior to commencement of any construction, the Licensee shall, at its cost and expense, purchase and maintain during the Construction Phase such insurances as are necessary, including but not limited to the following:

I. builders all risk insurance;

II. comprehensive third party liability insurance including injury or death to personnel of the Licensor and others who may enter the Licensed Premises;

III. workmen's compensation insurance;

IV. marine cum storage cum erection insurance;

V. breakdown insurance

VI. any other insurance that may be necessary to protect the Licensee, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

18.2.7.2. Operations Phase

Prior to commencement of Commercial Operations, the Licensee shall, at its cost and expense, purchase and maintain during the Operations Phase insurance to cover against:

I. loss, damage or destruction of the Project Facilities at replacement value;

II. the Licensee's general liability arising out of the Licence; including coverage for products and completed operations and blanket contractual liability for obligation of Licensee to Licensor under this Agreement

III. liability to third parties;

IV. terminal operators liability with errors and omissions coverage; and

V. any other insurance that may be necessary to protect the Licensee and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

18.2.7.3. Insurance companies

The Licensee shall insure all insurable assets comprised in the Licensed Premises and/or the Project Facilities through Indian insurance companies and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be effected with them.

18.2.7.4. Evidence of insurance cover

Copies of all insurance policy(ies) (or appropriate endorsements, certifications or other satisfactory evidence of insurance) shall be delivered to the Licensor by the Licensee.

18.2.7.5. Application of insurance proceeds

Subject to the provisions of this Agreement, all moneys received under any such policy(ies) shall be promptly applied by Licensee towards repair or renovation or restoration or substitution of Terminal or any part thereof, which may have been damaged or destroyed. The Licensee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Terminal or any part thereof, shall, after such repair or

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renovation or restoration or substitution be in nearly the same or as good condition as it was before such damage or destruction. The Licensee shall proceed with such repair or renovation or restoration or substitution work as soon as reasonably possible after such damage / destruction irrespective of whether it has received its insurance claims or not.

18.2.7.6. Validity of the insurance cover

The Licensee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Licence Period, and furnish copies of the same to the Licensor.

18.2.7.7. Remedy on failure to insure

If at any time the Licensee fails to procure or maintain in full force and effect any and/or all of insurances required under this Agreement, the Licensor may at its option procure and/ or maintain such insurance and all sums incurred by the Licensor thereof shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the Licensor by encashing the Construction/ Payment Guarantee. Failure by the Licensee to obtain the insurance coverage or certificates of insurance required pursuant to this Section 18.2.7 shall not relieve the Licensee of all or any of its obligations herein or in any way relieve or limit the Licensee's obligations or liabilities under any other provisions of this Agreement.

18.2.7.8. Endorsements

All insurance policies supplied/procured by the Licensee shall include a primary and non contributing endorsement. The general liability insurance shall name the Licensor as the additional insured, and shall include appropriate cross liability clauses as required by the Licensor. The insurance policies shall also include a provision whereby the insurance carrier is required to provide, directly to the Licensor, thirty (30) days advance written notice before termination, change or cancellation of coverage takes effect for such policies, regardless of whether cancelled by the Licensee, insured or the insurance carrier.

18.2.7.9. Waiver of subrogation

All insurance policies supplied/procured by the Licensee shall include a waiver of any right of subrogation of the insurers there under against, Licensor, and its assigns, subsidiaries, affiliates, employees, other insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy.

18.2.7.10. Exclusion

Where this Agreement provides for remedies and/or compensations for any event due account shall be taken for remedies customarily available and/or then available through insurance and/or reinsurance covering damages related to such event. No compensation shall be paid for losses that should have been insured, but were not adequately insured by the Licensee.

18.2.8. Assignability

I. The Licensee shall not assign or transfer all or any of its obligations or liabilities under this Agreement, or its interest in the Project assets except to the Lenders financing the Project.

II. The right of the Lenders, upon assignment of the rights and obligations under this Agreement or interest in the Project assets, to substitute the Licensee shall be subject to the approval of the Licensor as regards the identity of the transferee and the provisions of Section 22.3.7 shall apply, *mutatis mutandis*.

III. Any transfer of interest in the Project assets by sub-contracts shall be subject to the prior approval of the Licensor as regards the identity of the transferee and the provisions of Section 22.3.7 shall apply, mutatis mutandis.

IV. In the event of the such assets reverting to the Licensor at the time of transfer consequent to expiry of the Licence by efflux of time or on termination of this Agreement, the Licensee shall ensure that all existing charges and Encumbrances in respect of such assets, are extinguished prior to the payment of Final Compensation Payable and that the Licensor shall enjoy peaceful possession failing which the Licensor shall have the right to invoke any outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement. .

18.2.9. Transfer of technology and know-how

The Licensee agrees and undertakes to transfer free of cost all technology and up-to-date know-how, wherever applicable, to design, construct, operate, manage, maintain and market the Terminal to the Licensor and the Licensee shall not claim any fees or charges for such transfer.

At least six Months before the Scheduled Date of Transfer or on issue of Termination Notice, the designated key personnel of the Licensor shall be associated with the operations and shall be trained by relevant personnel of the Licensee at the Port to facilitate smooth transfer to the Licensor.

18.2.10. Avoidance of damage to properties

The Licensee shall take all precautions whilst carrying out the contract work against any possible damage to any property of the Licensor within the Licensed Premises. Should any such damage be done by the Licensee, it shall make good or bear the cost of making good the same, when brought to its notice without delay to the satisfaction of the Licensor.

18.2.11. Inspection

I. The Licensee shall ensure unhindered access and offer necessary co-operation to the Licensor or its representatives for monitoring and inspection of construction activities.

II. The Licensee shall allow the Licensor and/or its nominees and/or its agents to inspect the construction, development and operations of the Terminal at reasonable times and on prior intimation, access to the Project site to review the progress and to ascertain compliance with any of the requirements of this agreement.

III. Provided that failure on the part of the Licensor to inspect any works shall not, in relation to such works,

a) amount to any consent or approval by the Licensor nor shall the same be deemed to be waiver of any of the rights of the Licensor under this Agreement; and

b) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work/responsibility.

18.2.12. Condition survey

I. The Licensee agrees that six Months before the expiry, by efflux of time, of the Licence Period it shall, cause to be conducted at its cost by an Expert, to be appointed in consultation with the Licensor a condition survey and an inventory of the entire Licensed Premises, Terminal and Project Facilities. If, as a result of such survey, the Expert shall observe / notice that the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof have / has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and

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expenses, take all necessary steps to put the same in good working condition well before the Scheduled Date of Transfer.

II. In the event the Licensee fails to comply with this provision, the Licensor may itself cause the condition survey and inventory of the Licensed Premises and Project Facilities including the Terminal to be conducted and remove any defect or deficiency. The Licensor shall be promptly reimbursed by the Licensee for the costs incurred in conducting such survey and preparation of inventory as also in putting the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof in a good working condition, failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

18.2.13. Maintenance Guarantee

I. Two Years prior to the expiry of the Licence, the Licensee shall as security for performance of its obligation referred in Section 14.2.2 and other obligations under this Agreement, execute and keep valid till one Year after the end of the Licence Period, a bank guarantee enforceable and encashable at Chennai in favour of the Licensor issued by a scheduled bank acceptable to the Licensor for a sum of Rupees equal to 2% of the Project Cost[6].

II. In the event of Licensee's failure to provide such Guarantee, the same shall be deemed to be a Licensee Event of Default and the Licensor shall accordingly be entitled to terminate this Agreement in accordance with Section 22.

18.2.14. Performance standards

The Licensor may appoint a committee of its representative and/or independent experts to assess the performance of the Terminal, at its own cost, and publish a periodic report for the information of port users.

18.2.15. Interaction of the Licensee with Licensor

I. In addition to the information detailed elsewhere in this Agreement, the Licensee shall submit to the Licensor:

a) Bi-annual reports on the compliance with the agreed maintenance standards and replacement schedule for assets

b) Monthly reports on commodity-wise traffic;

c) Six monthly reports on the third parties operating in the Terminal including the sub-contractors, sub-lessees and users with long term contracts;

d) Sub-contractors, sub-lessees and users with long term contracts;

e) Vessel movement reports as may be directed by the Licensor.

II. The Licensee shall provide information on traffic performance statistics of the Project Facility from time to time as may be required by the Licensor in the formats specified.

III. The Licensee shall provide any additional information as the Licensor may require to ensure that the Licensee is in compliance with the terms of this Agreement.

[6]Maintenance Guarantee shall be equal to Rs. 11.63 Crore (2% of the Project Cost)

19. Obligations and rights common to Licensor and Licensee

19.1. Compliance with laws and regulations

The Parties shall at all times perform its obligations under this Agreement in accordance with the existing law and shall at all times observe and comply with all relevant existing and Applicable Laws.

19.2. No hindrance

I. The Licensor shall take adequate care to ensure that construction / development and operation of the Port will not adversely affect or cause hindrance to the construction / development and operation of the Terminal.

II. The Licensee shall take adequate care to ensure that construction / development and operation of the Terminal and other facilities will not adversely affect or cause any hindrance to any other construction / development or operation of the Port.

19.3. Taxes, customs duties and charges

I. The Licensee shall be responsible for all taxes, duties, levies, cess, assessment charges including but not limited to income or corporate taxes that may be levied, claimed or demanded from time to time by any Government Authority or any other statutory body or corporation under any law, statute or any amendments to existing laws and statutes in respect of or in connection with the Terminal, save and except for income tax payable by the Licensor.

II. The Licensee shall ascertain tax benefits and / or concessions available for the Licensee for investing in the Project. The Licensor may issue recommendatory letters, if required, as per procedure. The responsibility for getting any notification issued by any Government Authority for any benefits and / or concessions in taxes and / or customs duties and / or charges shall rest with the Licensee.

19.4. Responsibility for employees

The Parties shall be solely responsible for any acts or labour unrest by its respective employees or its agents / its contractors and the respective parties shall be solely liable for any loss / damage caused to the Licensee due to such acts or labour unrest.

19.5. Rights to documents

19.5.1. Licensor documents

Documents and computer programs or copies thereof, if any, provided by the Licensor to the Licensee, shall remain the property of the Licensor. The Licensee shall not use such documents, computer programs and / or copies for the purposes other than for the Project. The Licensee thereof shall return such documents, computer programs and / or copies to the Licensor on the expiry of the Licence Period or early termination of this Agreement, unless otherwise agreed upon between the Licensor and the Licensee.

19.5.2. Licensee documents

Documents and computer programs of the Licensee which are developed for operation and / or maintenance of the Project, if any, shall be handed over by the Licensee to the Licensor free of cost at the expiry of the Licence Period or early termination of this Agreement. All copyrights, intellectual property rights and other rights in such documents and programs shall vest exclusively with the Licensor and the Licensee shall not have any right to use them after expiry of Licence Period.

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19.6. Confidentiality

All information and documents (whether financial, technical or otherwise) obtained by either Party or its agents which are not otherwise publicly available must be kept confidential and not disclosed to third parties or the public without the prior written approval of the other Party except as required by law or pursuant to this Agreement, provided however, that any Party, with the written consent of the other Parties, may issue press releases containing non-sensitive information in relation to the progress of the Project.

Also, this Clause shall not apply to information:

a) already in the public domain, otherwise than by breach of this Agreement.

b) Already in the possession of the receiving Party before it was received from any other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality: or

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

d) Disclosure to Lenders or affiliate or any such Party under terms of confidentiality.

This covenant shall survive on expiry of Licence Period or early termination as the case may be, of this Agreement.

19.7. Indemnification

I. The Licensee hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensor, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belonging to the Licensor, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Licensee or as a result of failure on the part of the Licensee to perform any of its obligations under this Agreement or on the Licensee committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensee to perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensee to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensee or its contractor(s) and / or sub-contractors and / or invitees as the case may be, in connection with or arising out of this Agreement and / or arising out of or in connection with Licensee's use and occupation of Licensed Premises and / or Terminal.

II. In addition, the Licensee also agrees to indemnify the Licensor, its agents and employees in respect of all cost and expenses incurred by it in prosecuting or defending any action or suit (civil or criminal) by any third party which the Licensor, its agents and employees is forced to initiate to protect its interest or forced to defend in connection with or arising out of this Agreement.

III. The Licensee shall comply with all Applicable Laws in accordance with the obligations of the Licensee under this Agreement. The Licensee shall be liable for and shall defend, hold harmless and indemnify the Licenser against all losses, claims and costs arising out of the Licensee's performance of the Agreement, breach of the Agreement, claims of personnel, claims of users in the event of disruption in service caused due to berthing directives and claims of third parties in the nature of lessees, sub-lessees, construction contractors, subcontractors for services and other such parties (unless otherwise provided for in this Agreement).

IV. The Licensor hereby agrees and undertakes that during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensee, its agents and employees, from and against all claims, demands made against and / or loss caused and / or damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or cost, charges / expenses incurred or put to and /or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage caused or suffered to property owned or belong to the Licensee, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Licensor or as a result of failure on the part of the Licensor to perform any of its obligations under this Agreement or on the Licensor committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensor to perform any of its statutory duty and / or obligations or failure or negligence on the part of the Licensor to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners / agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensor or its contractor(s), sub-contractor(s), invitees or employees, servants, agents of such contractor(s) and / or sub-contractor(s) and / or invitees as the case may be, in connection with or arising out of this Agreement.

V. Without prejudice to Section 20, 21 and 22, neither Party shall be liable to the other Party for any indirect, consequential, incidental, punitive or exemplary damages or for loss of profit, consequential financial or economic loss or any disruption in the flow of traffic into the Terminal for any reason whatsoever.

19.8. Obligation to co-operate

The Parties shall mutually co-operate with each other in order to achieve the objectives of this Agreement.

20. Change in Law

20.1. Change in Law

I. "Change in Law" means the occurrence of any of the following events on or after the Bid Submission Date which has a Material Adverse Effect:

A. coming into effect of any new Applicable Law except to the extent such Applicable Law was enacted prior to the Bid Submission Date and such Applicable Law takes effect without material amendment; or

B. amendment, alteration, modification and repeal of any existing Applicable Law ;

C. any change in the interpretation or application of any Applicable Law by a competent court, tribunal or legislature in India having the authority to interpret or apply that Applicable Law or any interpretation of any Applicable Law by such authority which is contrary to the existing generally accepted interpretation thereof;

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

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

II. Provided nothing contained in this Section 20.1 shall be deemed to mean or construe any change in direct / indirect tax laws, taxes, duties, cess, surcharge or other statutory levies

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effected from time to time by any Government Authority or change in tariffs by Regulatory Authority, as Change in Law

III. For avoidance of doubt, it is hereby clarified that inclusion of KPL or the Project in the scope / purview of any Regulatory Authority shall not be Change in Law.

20.2. Notification of a Change in Law

I. The affected party shall on the occurrence of a Change in Law, give notice of such Change in Law to the other Party in accordance with the provisions of this Section 20 as soon as it may be reasonably practicable, but in any event no later than 7 days from the date of occurrence of such Change in Law, failing which the affected party shall be deemed to have waived its right to any relief on account of such Change in Law.

II. The notice served pursuant to this section shall provide inter-alia, precise details of the Change in Law and the effect thereof on the Licensee.

20.3. Consequences of Change in Law

I. In the event that such Change in Law renders impossible the exercise by the affected party of any of its material rights or performance of any of its material duties and obligations, the affected party shall be entitled to serve a notice for termination of this Agreement (Notice of Intent to Terminate). Provided that prior to service of the Termination Notice, the Parties shall consult in good faith for a period of 90 Days to mitigate the Material Adverse Effect of the Change in Law. In the event the Parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 90 Day period, either Party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved in accordance with Section 27.

II. The Parties hereby acknowledge and agree that:

a) the Licensee/Licensor shall be entitled to serve a Termination Notice on the Licensor/Licensee provided that the Change in Law results in physical or legal impossibility of performance of the Licensee's/Licensor's obligations or exercise of its rights under this Agreement. The Parties shall bear the respective impact of any economic consequences of Change in Law;

b) the change in constitution, powers or scope of the regulatory authority or the appointment of a new regulatory authority by the Government for the regulation of ports shall be deemed not to be a Change in Law.

III. Upon termination of this Agreement due to Change in Law the Licensor shall takeover the Project as per Section 23 and pay compensation to the Licensee as per Section 25.2.

21. Force Majeure

21.1. Force Majeure Event defined

As used in this Agreement, a Force Majeure Event shall mean any or all of the Non-Political Force Majeure, Indirect Political Force Majeure and Direct Indian Political Force Majeure Events as defined hereunder in Section 21.2, occurring on or after the Date of Award of License which (or the consequences of which) have a Material Adverse Effect on the Party claiming Force Majeure (the "Affected Party") in respect of its obligations in whole or in part under this Agreement and which are beyond the reasonable control, directly or indirectly, of the Affected Party (it being understood that if a causing event is within reasonable control of an Affected Party, the direct consequences shall also be deemed to be within such Party's reasonable control); and which is not due to any fault of the Affected Party and which (or the material and adverse effect of which) the Affected Party could not have prevented, avoided,

overcome or remedied even if the Affected Party had exercised reasonable skill and care or had acted in accordance with Good Industry Practice.

21.2. Types of Force Majeure Events

21.2.1. Non-Political Force Majeure Events

I. act of God such as storm, lightning, cyclone, hurricane, earthquake, volcanic eruption, flood or landslide

II. fire, explosion, accident caused by a person not being the Affected Party or any of its employees or agents or any of its contractors or sub-contractors or any of their respective employees or agents and not being due to inherent defects of the Terminal or any part thereof or the failure of the Licensee to properly design, construct, develop, operate and maintain the Terminal or any part thereof

III. epidemic or famine

IV. radioactive contamination, nuclear blast or ioinising radiation not due to an act of war

V. air crash, shipwrecks

VI. strikes or lockouts interrupting supplies and services to the Project (other than those involving the Licensee, its employees or agents or its contractors or sub-contractors or any of their respective employees or agents or any strike or lockout attributable to any unfair policy or practice of the aforementioned Persons) not being an Indirect Indian Political Force Majeure Event as set forth in Section 21.2.2 under this Agreement

VII. any event or circumstance of a nature analogous to any of the above

21.2.2. Indirect Indian Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Indirect Indian Political Force Majeure.

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

II. industrial action strikes by the employees of the Licensor or industry wide or state or nation wide strikes of the railways, oil companies or truckers.

III. any failure or delay of a main contractor executing a contract of significant value for the Project but only to the extent caused by another indirect Indian Political Force Majeure Event,

IV. any event or circumstance of a nature analogous to any of the above.

21.2.3. Direct Political Force Majeure Events

Any of the following events occurring within the geographical limits of India shall constitute Direct Political Force Majeure

I. expropriation or compulsory acquisition by any Government Authority of any material assets or rights of the Affected Party or its contractors or agents except to the extent that it constitutes a remedy or sanction lawfully exercised by the Governmeat Authority as a result of any breach by the Affected Party, its contractors or agents of any Applicable Law

II. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Licensee or any of its contractors to perform their respective obligations under the Agreement provided that such delay, modification, denial, refusal or revocation did not result from the Licensee's or any of its contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

21.2.4. Force Majeure exclusions

None of the following shall, without limitation, constitute a Force Majeure Event:

I. late or non-delivery of equipment, materials, spare parts, water, power or other utilities for the Project unless the delay is due to a Force Majeure Event as defined above

II. insufficiency of funds or non-availability of working capital for any reason whatsoever

III. non-performance resulting from normal wear and tear typically experienced in the operations of / in the Terminal or due to faulty design and/or implementation

IV. non-performance caused by or connected with the Licensee's / Licensor's

A. negligent or intentional acts or omissions

B. failure to comply with the Applicable Laws and Applicable Permits then in effect

C. default under this Agreement by either Party.

21.3. Obligation of the Parties to perform

I. The obligations and liabilities of the Parties under this Agreement would continue as long as the performance is not impeded by Force Majeure Event as defined above in Section 21.1. The affected Party shall resume performance of its obligations under this Agreement as soon as possible after the Force Majeure Event ceases to exist.

II. Provided that the performance of the Licensee's obligations and liabilities shall, for the Period of Force Majeure, be governed as per and be subject to the provisions of Section 21.4. Nothing in this Section 21 absolves the Licensee from the obligation of payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

21.4. Procedure

21.4.1. Notice

I. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event as soon as the same arises, and in any event within 10 (ten) Days after the knowledge by the Affected Party of such Force Majeure Event or after the Affected Party ought to reasonably have knowledge of its occurrence and the other Party acknowledges that Force Majeure would apply

II. Notice shall inter-alia include full particulars of:

a) the nature of each Force Majeure Event

b) the date and time effective when the performance by the Affected Party of its obligations under this Agreement was affected

c) the material adverse effect which such Force Majeure Event is having on the performance by Affected Party of its obligations under this Agreement

d) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events or mitigate the damage

e) an estimate of the period of time that the Affected Party shall be unable to perform its obligations and/or continue to be materially adversely affected by the Force Majeure Event and

f) any other relevant information

III. Failure by the Affected Party to give notice to the other Party within the time period specified above shall not prevent the Affected Party from giving such notice at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies as envisaged

in Section 21.7 for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Section 21.4.1.

21.4.2. Reporting requirement

For so long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with regular (and not less than Monthly) written reports containing

I. the information called for by Section 21.4.1 and

II. such other information as the other Party may reasonably request and required under this Agreement.

The Affected Party shall also provide to the other party reasonable facilities including site inspection for obtaining further information about the Force Majeure Event or circumstance alleged to constitute a Force Majeure Event.

21.5. Period of Force Majeure

I. In this Section 21, reference to a period of Force Majeure shall mean the period from the date and time specified in the notice given by the Affected Party in respect of an event or circumstance of Force Majeure, until the earlier of:

a) such time as the performance by the Affected Party of its obligations hereunder is no longer or would no longer have been, if the Affected Party had complied with its obligations under this Section 21, materially and adversely affected by such event or circumstance of Force Majeure and

b) if this Agreement is terminated pursuant to Section 21.8 by reason of the event or circumstances of Force Majeure, the date in respect thereof of service of such notice.

II. When the Affected Party is able, or would have been able if it had complied with its obligations under the provisions of this Section 21, to resume performance of all of its obligations, under this Agreement, affected by the occurrence or continuation of an event or circumstance of Force Majeure, then the Period of Force Majeure relating to such event or circumstance of Force Majeure shall be deemed to have ended and the Party affected by the Force Majeure Event shall forthwith give notice to that effect to the Other Party.

III. In the event that such notice is not tendered by the Affected Party to the other party within a week from the expiry of the Force Majeure period, the other party may serve such notice to the Affected Party.

21.6. Consultation and duty to mitigate

I. For so long as the Period of Force Majeure is continuing, the Affected Party shall consult with the other Party and the Affected Party shall use all reasonable endeavors to alleviate its effects on the performance of its obligations under this Agreement. The other Party shall offer reasonable assistance to the Affected Party to alleviate the effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.

II. The Affected Party shall use the insurance proceeds to mitigate the impact of the Force Majeure Event.

21.7. Consequences

Provided that the Affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 21.6, and during the Force Majeure period continues to comply with the same, the Affected Party shall be entitled to the following relief:

I. the obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be suspended for the Force Majeure period, as the case may be;

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

III. the time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended till the period it lasts plus time taken to mitigate the effect of the Force Majeure, as the case may be; and

IV. the term of this Agreement may be extended till the period Force Majeure lasts plus time taken to mitigate the effect for the Force Majeure period.

21.8. Termination due to Force Majeure Event

I. In the event that any such Force Majeure event shall physically impede or prevent the Affected Party from performing its obligations under this Agreement for more than 90 Days from the date of commencement of such Force Majeure event, the Parties may mutually decide the terms upon which the Licensee shall continue the performance of its obligations. If the Parties are unable to agree on such terms within a period of 90 days, then the Licensee shall have the option to terminate the Agreement, except in case of Direct Political Force Majeure Event for which either parties shall have the right to terminate this Agreement.

II. If the Licensee does not exercise the right of termination and the Force Majeure Event (being an event other than Direct Political Force Majeure Event) continues for a period of one year from the date of commencement of Force Majeure Event, then the Licensor shall also have the right to terminate this Agreement

22. Default and termination

22.1. The Licensee Event of Default

The Licensee Event of Default includes any of the following events besides other events described as such elsewhere in this Agreement, unless such an event has occurred as a consequence of the Licensor Event of Default, or a Change in Law which results in consequences set out in Section 20.31 or a Force Majeure Event:

I. the Licensee's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement.

II. the Licensee's failure to achieve Financial Close within 12 months from the Date of Award of Licence

III. failure to commence Commercial Operations within 30 Months from the Zero Date and including such extended period for construction as may be approved by the Licensor

IV. Repudiation of this Agreement by the Licensee or the evidencing of an intention by the Licensee not to be bound by the terms of this Agreement.

V. the Licensee engaging or knowingly allowing any of its employees, agents, contractors or representatives to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law in the course of any activity undertaken pursuant to this Agreement.

VI. the Licensee assigns its rights, title and interest in the Agreement without the prior written approval of the Licensor

VII. the Licensee sub-contracts the Licensed Premises or Project Facilities or any part thereof without the prior written approval of the Licensor

VIII. the Licensee or any of its employees, agents, contractor and representatives engage in or knowing take part or fail to take action to prevent the commission of illegal activities at the Port

IX. any representation made or warranties given by the Licensee is found to be false or misleading;

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X. any information provided by the Licensee under this Agreement is found to be false or misleading or a material misrepresentation

XI. the Licensee is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation or reconstruction provided that the property, assets and undertaking of the Licensee are transferred to its successor; and provided that such amalgamation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the Licensee's obligations and the technical, financial and operating capability of the successor should be satisfactory to the Licensor and is not prejudicial to national interest as determined by the Licensor.

XII. levy of an execution or distraint on the Licensee's assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 90 Days.

XIII. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Licensee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.

XIV. the Licensee abandons the construction or operation of the Terminal and /or any of the Project Facilities for a continuous period of 90 days.

XV. persistent failure on the part of the Licensee to operate and promote activities at the Terminal and provide users with services in accordance with the principles of Good Industry Practice and in accordance with the provisions of this Agreement.

XVI. failure of the Licensee to comply with statutory obligations under Applicable Laws

XVII. default to Lenders by the Licensee

XVIII. failure to apply insurance proceeds as per the provisions of the Section 18.2.7.5

XIX. failure to pay Revenue Share, land licence fee and land lease rentals as per provisions of Section 17.

XX. failure to furnish and/or replenish and/or keep valid any Guarantee as required under this Agreement

XXI. violation of strategic, security, environmental or conservancy concerns on the Licensee's part

XXII. failure to ensure shareholding as per the provisions of the Section 18.2.2.

22.2. The Licensor Event of Default

The following events (unless arising as a result of a Force Majeure, or Licensee Event of Default or a Change in Law) would constitute Licensor Event of Default:

I. the Licensor's failure to perform or discharge any of its material obligations in accordance with the provisions of this Agreement .

II. Clause Not Applicable / Not Used.

III. any representation made or warranties given by the Licensor under this Agreement is found to be false or misleading.

IV. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Licensed Premises in any legal proceedings initiated against the Licensor.

V. dissolution of the Licensor or occurrence of any structural changes within the present constitution of the Licensor which have a Material Adverse Effect on the rights and obligations of the Licensee under this Agreement, or the transfer of the Licensor's undertaking and statutory powers or any material part thereof, unless such dissolution or structural change

or transfer is in connection with privatisation or other restructuring of all or any substantial part of the Licensor, and the Licensor's successor is able to perform the Licensor's obligations under this Agreement.

VI. repudiation of this Agreement by the Licensor or the evidencing of an intention by the Licensor not to be bound by the terms of this Agreement.

22.3. Consequences of default

In the event of a Licensor Event of Default or Licensee Event of Default ("Event of Default") the termination procedure as set out in this section shall apply.

22.3.1. Notice of Intent to Terminate

I. On the happening of any Event of Default as set out above, the non defaulting Party may initiate termination of this Agreement by delivering a notice to the defaulting Party of intention to terminate this Agreement (Notice of Intent to Terminate). The non-defaulting Party shall also send a copy of the Notice of Intent to Terminate to the Lenders.

II. The Notice of Intent to Terminate shall specify with reasonable detail the defaults committed by the defaulting Party.

22.3.2. Lenders rights to rectify

I. Without prejudice to Section 22.3.3 below, if Notice of Intent to Terminate is issued by the Licensor for non payment of any amount due and payable by the Licensee or for any other Licensee Event of Default, the Lenders shall within a period of 90 Days from the date of issue of the Notice of Intent to Terminate, have the right to rectify the default and take all such acts as may be necessary for such purpose.

II. In the event Lenders exercise the right to cure the default, the Lenders shall pay all sums then due and payable to the Licensor or in any other manner assist the Licensee in rectifying the Event of Default. If the Event of Default is cured within such period of 90 Days:

a) The Notice of Intent to Terminate shall stand revoked without prejudice to the rights of Licensor to issue similar notice for any subsequent breach or any other breaches by the Licensee; and

b) The Licensee shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate was not issued.

III. The Lenders rights under this Section 22.3.2 shall continue to remain in force during the termination procedure and till the issue of the Termination Notice.

22.3.3. Remedy period

I. Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of 90 Days ("Remedy Period") to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.

II. During the Remedy Period, the defaulting Party may continue to undertake efforts to cure the default, and the non-defaulting Party shall not, by any act or omission, impede or otherwise interfere with the defaulting Party's endeavours to remedy the Event of Default.

III. During the Remedy Period, both the Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

22.3.4. Withdrawal of Notice of Intent to Terminate

If, during the Remedy Period, the defaulting Party rectifies or remedies the default to the satisfaction of the non defaulting Party or the non defaulting Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default giving rise to the

Notice of Intent to Terminate has ceased to exist, the non defaulting Party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders.

22.3.5. Termination Notice

I. Upon the expiry of the Remedy Period, unless the Parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting Party or a Lender, the non defaulting Party may terminate this Agreement by giving a 90 Days written notice ("Termination Notice") to the defaulting Party, with a copy to the Leaders. The date of expiry of the Termination Notice shall be the date of termination of this Agreement.

II. Upon the expiry of such notice period unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement, this Agreement shall stand terminated on the Scheduled Date of Transfer and the provisions of Section 23 and 24 will be applicable.

22.3.6. Transfer Information Notice

I. Upon service of the Termination Notice in accordance with the provisions of this section on the defaulting Party, or on the service of a Termination Notice for Change in Law or Force Majeure, the Licensor shall be entitled to serve upon the Licensee a notice (the "**Transfer Information Notice**") calling upon the Licensee to provide within 30 Days the following:

a) all or any data or records regarding the operation and/or maintenance of the Terminal and the Project;

b) Statement of all capitalised assets and capital work in progress, as reflected on the balance sheet of the Licensee, and in particular the Contracted Assets as on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, certified by the Statutory Auditors

c) inventory of all assets and in particular the Contracted Assets, prevailing at the Licensed Premises and Terminal on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

d) inventory of all assets and in particular the Contracted Assets, reflected in the balance sheet of the Licensee on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate

e) statement of debt outstanding as per original schedule of repayments and in particular the Debt Due and paid up equity as on the date of issue of Transfer Information Notice and as on the date of Notice of Intent to Terminate, supported by Lenders certificate and Statutory Auditors certificate, to enable an estimation of the likely compensation, if any, payable by the Licensor to the Licensee.

f) statement of cash and cash equivalents as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

g) statement of net current assets as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance of the Notice of Intent to Terminate supported by Statutory Auditors certificate.

h) statement of equity and reserves as reflected in the books of the Licensee as on the date of the Transfer Information Notice and the date of issuance the Notice of Intent to Terminate supported by Statutory Auditors certificate.

i) any other information or records regarding the Licensee, its business, assets and liabilities

II. On receipt of the Termination Notice, the Licensee shall cause to be conducted, by third party experts, a condition survey of the entire Licensed Premises, Terminal and Project Facilities at

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the expense of the Party identified as per provisions of Section 18.2.12 to ascertain the condition and quality of the Licensed Premises and/or the Project Facilities and/or the Terminal and/or any part thereof provided by the Licensee and to ascertain whether or not the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof provided by the Licensee are in working condition and whether or not the Licensee has complied with the provisions of this Agreement. A report by such Experts including an inventory and the condition of the Contracted Assets prevalent at the Licensed Premises, Project Facilities and Terminal shall be submitted to the Licensor within two months of receipt of such notice.

III. If, as a result of the condition survey, the Licensor shall observe/notice that Contracted Assets prevalent at the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

IV. In the event the Licensee fails to comply with the provisions of this Agreement, the Licensor may itself cause the condition survey to be conducted. The Licensor shall be promptly compensated by the Licensee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Contracted Assets at the Licensed Premises and/or the Project Facilities or and/or the Terminal and/or any part thereof in good working condition failing which the Licensor shall have the right to invoke the Maintenance Guarantee or any other outstanding Guarantee for recovery of the said amounts, without prejudice to any other remedies the Licensor may have under this Agreement.

V. The Licensee shall also offer cooperation to the independent Experts appointed for condition survey.

22.3.7. Lenders' rights of substitution

As per the procedure set out in Appendix 17 – Substitution Agreement

22.3.8. Obligation of the Licensor and Licensee

I. Till the Transfer Date, the Parties shall subject where applicable to the provisions of Section 21, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

II. From the date of issue of Notice of Intent to Terminate till withdrawal of the same or the Transfer Date, the Licensee shall not sell/dispose/modify or take any steps to sell/dispose/modify any of the assets or material contracts of the Licensee without prior written permission of the Licensor.

22.4. Step-in rights

I. Notwithstanding anything in this Agreement the Licensee agrees that the Licensor (on its own or acting on behalf of the Government of India) or the Government of India shall be entitled to operate the Terminal on the occurrence of the following events:

A. Licensee Event of Default;

B. an emergency (being a condition or situation which in the reasonable opinion of the Licensor, poses a significant threat to the safe operation of the Terminal/Port or which seriously endangers the security of persons, plant or equipment); or

C. for national security and/or national interests reasons.

II. In the event of a Licensee Event of Default, the Licensor may (but shall not be obliged) operate the Terminal upon the issue of the Termination Notice under the provisions of Section 22. Notwithstanding the exercise of step in rights, the provisions of Section 22 shall continue to apply.

III. Upon the occurrence of the events specified in Section 22.4IB and Section 22.4IC above, the Licensor, or Government of India may exercise step-in rights during which period:

A. the Licensor shall be entitled to all revenues and liable for all standing, and operating expenses including debt servicing relating to the facilities taken over;

B. the Licensor shall not be liable to compensate the Licensee or any other Person or the long-term users for any losses or estimated loss of profits during such period or any return on equity.

C. after a maximum continuous period of one year, the Project Facilities shall revert to the Licensee in the same condition, save for normal wear or tear. In the event of any dispute regarding the condition of Project Facilities reverting to the Licensee, the same may be referred to the Expert Committee.

IV. Excepting in the case of the events specified in Section 22.4IA the Licensee shall be entitled to an extension of the Licence Period for the duration of exercise of step-in rights by the Licensor, or the Government of India.

V. Excepting in the case of the events specified in Section 22.4IA, without prejudice to Section 22.4IV, in the event that the step-in rights are exercised by the Licensor, or the Government of India for a cumulative period in excess of one year during the Licence Period, the parties shall determine, in good faith, the compensation payable to the Licensee for the loss of income. In the event that the parties are unable to agree on the compensation, the either Party may invoke dispute resolution procedure as per the provisions of Section 27.

23. Scope of transfer

I. The scope of take-over of assets as provided in this Agreement pursuant to termination hereof for any reason or expiry of the Licence shall include all Contracted Assets prevailing at the Licensed Premises and comprising the Terminal on the date of issue of Notice of Intent to Terminate free from all Encumbrances (the "Transfer Assets") and shall, interalia, include:

i) all land and buildings;

ii) plant and machinery; cargo handling equipment, storage facilities, and any other equipment

iii) spare parts;

iv) such deeds and documents as may be necessary for effectively transferring (in respect of the above) rights, title and all other interests under this Agreement in favour of the Licensor;

v) the benefits of all rights and interest in all unexpired insurance, guarantees and contractor warranties if so desired by the Licensor; and

vi) all documents, manuals, records, technical know-how intellectual property rights, etc. as may be required for the efficient operation of the Terminal.

b) All assets shall be transferred free of any and all Encumbrances

c) For avoidance of doubt it is expressly clarified that the takeover shall exclude

i) All current assets and liabilities attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates and/or subsidiaries

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ii) cash in hand and cash at bank, financial investments, loans and advances, other current assets if any, the benefit of any refund of tax attributable to the period prior to the date of Notice of Intent to Terminate as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries.

iii) any trade and book debts or receivables accruing to the Licensee prior to the date of Notice of Intent to Terminate

iv) such agreements, contracts or arrangements as notified by the Licensor

II. Furthermore, notwithstanding anything contained in this clause no liability (accrued or contingent) of Licensee or relating to the Project arising on account of actions or inactions of the Licensee prior to the Transfer Date shall be assumed by the Licensor consequent to such transfer

III. Unless otherwise agreed to, miscellaneous assets and other intangible assets (such as goodwill) shall also stand excluded from the scope of asset takeover and compensation.

IV. The Licensee undertakes to ensure that the provisions of this section shall be reflected in any agreement or contract that may be entered into between the Licensee and the sub-contractors or any other party for construction of assets or provision of services. Notwithstanding anything contained herein and without prejudice to any of its other rights under this Agreement, the Licensor shall be entitled to invoke and encash the entire amount under any subsisting Guarantee (s) provided by the Licensee, if the termination is on account of a Licensee Event of Default. The compensation payable for such transfer is detailed in Section 25

24. Consequences of termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Licence Period by efflux of time or due to a Force Majeure Event or an Event of Default or Change in Law.

24.1. Licensees obligation to transfer assets

I. On or before the Transfer Date, the Licensee shall subject to the provisions of this Agreement :

A. handover/surrender peaceful possession of the all Transfer Assets to the Licensor free of cost and without Encumbrance.

B. transfer all its rights, titles and interest in or over the Transfer Assets comprised in the Project Facilities to the Licensor and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

C. The Licensee shall, at its cost, transfer to the Licensor all such Applicable Permits which the Licensor may require and which can be legally transferred.

D. The Licensee shall at its cost transfer/assign such of the contracts, which the Licensor may require to be transferred in its favour subject to the counterparties to such contracts consenting to such transfer/ assignment. The Licensee shall entirely at its cost, terminate all such contracts which are not transferred/assigned to the Licensor. Notwithstanding anything contained in this clause the Licensor shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Licensor are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into.

24.2. Licensors obligations

I. On the Transfer Date, the Licensor shall subject to the provision of this Agreement, pay to the Licensee the compensation as the case may be in accordance with the provisions of Section 25.

24.3. Obligation of the Licensor and Licensee

I. The Licensor and the Licensee shall at least six months prior to the expiry of the Licence Period or upon commencement of termination procedure as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets and payment of Final Compensation Payable as the case may be on the Transfer Date. During this period, the designated key personnel of the Licensor shall be associated with the operations of the Project Facilities (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Licensor on the Transfer Date.

25. Compensation payable on termination / expiry

25.1. Early termination due to Licensor Event of Default

In case of termination due to Licensor Event of Default occurring in any time during the Licence Period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due plus Paid up Equity outstanding as on date of issue of Notice of Intent to Terminate plus 20% premium on such Paid up Equity, subject to the provisions of Section 4.5 , Section 18.2.3 and Section 25.6.

For avoidance of doubt it is hereby clarified that the compensation shall be calculated as

Debt Due + Paid up Equity + {0.2 x (Paid up Equity)}.

For avoidance of doubt it is hereby clarified that no payments shall be made by the Licensor to the Licensee for the unexpired/unexhausted period of the Licence resulting from such early termination.

25.2. Early termination due to Change in Law or Force Majeure

In case of termination due to Change in Law or Direct Political Force Majeure occurring in any time during the Licence Period, the Licensor shall pay to the Licensee the compensation equal to the Debt Due subject to the provisions of Section 4.5V.c), Section 18.2.3 and Section 25.6.

For avoidance of doubt, it is hereby clarified that the Licensee shall transfer the Transfer Assets to the Licensor free of any consideration and free of any Encumbrance, in the event of termination of this Agreement pursuant to any Force Majeure Event other than Direct Political Force Majeure Event.

25.3. Early termination due to Licensee Event of Default

In case of termination due to Licensee Event of Default occurring in any time during the Licence Period, the Licensor shall pay to the Licensee, subject to the provisions of Section 4.5V.c), Section 18.2.3 and Section 25.6, the lower of:

(i) the aggregate fair value, as determined by the Expert being a reputed valuer, of Transfer Assets (excluding any assets provided by the Licensor), LESS amounts if any due to the Licensor from the Licensee under the provisions of this Agreement;

(ii) the Debt Due

25.4. Compensation payable on expiry of Licence

In the event of the expiry of the Licence by efflux of time (the Licence having run its full course), the Licensee shall transfer the Transfer Assets to the Licensor, free of any consideration and free of any Encumbrance.





25.5. Clarification

For avoidance of doubt, it is hereby clarified that the valuation of the compensation payable to the Licensee shall not be done on a "going concern" basis under any case of termination.

For avoidance of doubt, it is further clarified that the liability of KPL to pay compensation, if any, as calculated under sub-clauses 25.1, 25.2 and 25.3 in case of early termination of the License Agreement shall be on the basis of Project Cost that shall be the lowest of the following:

A. Cost of Project as per the Financing Document approved by KPL.

B. Completion Cost of the project certified by Statutory Auditors.

C. Aggregate fair value, as determined by an expert being a reputed valuer.

Further, the Project Cost arrived at as above shall not, in any event, exceed the ceiling of Rs. 500 Crore includes the project cost of conversion of existing iron ore terminal into common user coal terminal.

It is further expressly clarified that the compensation for transfer shall be paid at the time of and simultaneously with transfer of the Transfer Assets and shall always be payable in Indian currency.

25.6. Final Compensation Payable

I. On early termination of this Agreement (other than by normal expiry of Licence Period by efflux of time), the aggregate of the compensation, if any, calculated in terms of sub-clauses 25.1 to 25.5 and payable shall be hereafter defined to be the "First Estimate of Compensation".

II. The First Estimate of Compensation shall be corrected for any outstanding penalties and dues payable by the Licensee to the Licensor and/or any damages suffered by the Licensor and attributable to the Licensee.

III. The First Estimate of Compensation shall also stand reduced by the amount of any insurance proceeds receivable and/or any compensation receivable from anybody and/or any amount payable by the Central Government and shall be corrected in respect of any adjustments that may be deemed necessary by Experts appointed for the purpose.

IV. The First Estimate of Compensation shall be further reduced by any discrepancy found in respect of the Transfer Assets as compared with the assets recorded in the books of the Licensee as on the date of the issuance of the Notice of Intent to Terminate, with the value of such discrepancy to be determined by the Expert referred to in Section 22.3 above.

V. The final amount so arrived at after the aforesaid adjustments would be the "Final Compensation Payable" to the Licensee upon early termination, subject to the provisions of Section 18.2.8IV. The Final Compensation Payable shall be paid by the Licensor on transfer of Transfer Assets and shall always be payable in Indian Currency.

25.7. Payment of compensation to Lenders

I. The Licensee hereby irrevocably authorises the Licensor to pay to the Lenders or at their instruction to any designated bank account in India the Final Compensation Payable to the Licensee. The Licensee confirms that upon such payment being made, the Licensor shall stand duly discharged of its obligations regarding payment of Final Compensation Payable under this Agreement and the charge created by the Licensee in favour of the Lenders on any of its assets taken over by the Licensor shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Licensee further confirms that payment of Final Compensation Payable by Licensor in accordance with this Section 25.7 shall be a valid discharge to the Licensor in respect of Licensor's obligation regarding payment of Final Compensation Payable to the Licensee under this Agreement.

Kamarajar Port Limited Chennai

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II. Provided notwithstanding anything inconsistent contained in this Agreement, the Licensee/the Lenders as the case may be shall be entitled to remove at its/ their cost all such movables which are not taken over by the Licensor and to deal with the same in accordance with their respective rights under law.

III. Provided further, if there are no amounts outstanding under the Financing Documents and the Licensee furnishes a certificate to that effect issued by the Lenders to the Licensor, the Final Compensation Payable shall be paid by the Licensor to the Licensee directly where such payment is due to the Licensee.

25.8. Transfer fee and charges

Transfer fees, charges, and other incidental expenses incurred at the time of termination or transfer on expiry of Licence by efflux of time or on early termination shall be borne by the Licensor and the Licensee in the following proportion:

Head of Charge	Onus
1. Transfer fees or stamp duties, recording costs, notary fees	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
2. Fees to third party experts for any required inspections, condition surveys or certifications	• Party in default or on expiry of this Agreement, the Licensee. • In case of Change in Law or Force Majeure both parties equally
3. Internal costs and expenses of each Party (management time, cost of surveys, inventories, inspections etc)	• To be borne by each Party respectively

25.9. Licensor's liability

In the event of expiry of Licence by efflux of time or termination of this Agreement, the Licensor shall not be liable for any liability and/or damages to the Licensee or to any other third party except in accordance with the provisions of this Section 25.

26. Procedure for transfer

26.1. Time for transfer

I. In case of expiry of Licence by efflux of time, the Licensor shall issue a Transfer Information Notice at least 24 months before the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 22.3.6

II. In case of early termination of the Agreement, the Licensor shall issue a Transfer Information Notice indicating the Scheduled Date of Transfer and such notice shall be construed in accordance with the provisions of Section 22.3.6.

III. The scope of transfer of the Transfer Assets, the consideration payable, and the transfer fees and charges at the time of transfer consequent to termination and/or expiry of Licence by efflux of time, shall be determined in accordance with the provisions of Section 23 and Section 25.

26.2. Transfer of the facilities and premises

I. In the event of expiry of Licence by efflux of time, the final transfer of the Transfer Assets shall be effected within 60 Days of the Scheduled Date of Transfer ["Actual Date of

II. In the event of early termination due to Licensor Event of Default, the transfer of Transfer Assets shall be effected as specified in the Transfer Information Notice and as provided for in Section 26.1II.

26.2.1. Delayed transfer of assets

I. If for any reasons other than those attributable to the Licensor the Licensee fails to transfer the Transfer Assets on the Transfer Date in accordance with this Agreement, there shall be no suspension of the operation and maintenance of the Project Facilities and

a) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the fifth of the Month for the previous Month or the date of transfer, whichever is earlier.

b) the Licensee shall be liable to pay to the Licensor, for every Day of delay, liquidated damages computed at the rate of the average daily after tax profits earned by the Licensee during the three years immediately preceding the Transfer Date.

II. Provided nothing contained herein shall be deemed or construed to authorise delay in transfer of assets, rights and contracts by the Licensee to the Licensor in accordance with the requirements thereof under this Agreement and without any compensation for termination of such agency arrangements.

III. In case the transfer of Transfer Assets by the Licensee to the Licensor is delayed for reasons attributable to the Licensor, there shall be no suspension of the operation and maintenance of the Project Facilities and the Licensee shall nonetheless continue to operate the Project Facilities, but as agent of the Licensor. Provided however,

a) the Licensee shall, as agent of the Licensor continue to operate and maintain the Project Facilities until completion of the transfer formalities, for an agency remuneration of Rs [10,000] (Rupees [Ten Thousand]) per year or part thereof and

b) the Licensee shall not be liable to pay any liquidated damages;

c) the Licensee shall account for and pay to the Licensor the Gross Revenue net of statutory dues and operating expenses allowed by Licensor, from such operations for each Month or part thereof, on the fifth of the Month for the previous Month or the date of transfer, whichever is earlier.

26.2.2. Passing of risk

Until the Actual Date of Transfer, the Transfer Assets shall remain at the sole risk of the Licensee, and the Licensee shall be solely responsible for any loss of or damage caused to or suffered by the Licensee for any reasons whatsoever to whole or any part of the Project, unless such loss or damage caused to or suffered by the Licensee is due to any act of default or omission or negligence on the part of the Licensor.

27. Dispute resolution

Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be amicably resolved by the Expert Committee in accordance with the procedure set forth in Section 27.1

27.1. Expert Committee

I. In the event a Party issues a notice (Expert Committee Notice) to refer the dispute to the Expert Committee, the parties may finalise a choice of an independent expert in the field of

port and harbour engineering and/or financial and cost accounting as the case warrants within one week of such notice, failing which, each Party shall appoint one independent expert within two weeks of the Expert Committee Notice.

II. The two experts will jointly appoint a third expert with required experience within one week of their appointment. The 3 Experts jointly shall constitute the Expert Committee.

III. Such independent experts shall have adequate experience in the design, construction, operation and maintenance of port facilities and/or port finances, accounting and costing practices as the case warrants.

IV. The Party issuing the Expert Committee Notice will provide the Experts with written submission of the nature of the dispute and the claim of the other Party along with supporting documents within one week of the constitution of the Expert Committee. Within one week of the furnishing of such submission, the other Party may choose to provide written submissions defending its position.

V. The Expert Committee may call on either Party to furnish additional information as deemed necessary to solve the dispute.

VI. The Expert Committee shall give the majority decision to both Parties within three weeks of the receipt of written submission from the contracting Parties.

VII. The Parties shall share the costs of the engagement of the Expert Committees equally.

VIII. Pending the submission of and/or decision on a Dispute, difference or claim by the Expert Committee, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such decision.

27.2. Arbitration

I. If the dispute has not been resolved by the Expert Committee as evidenced by the signing of the written terms of settlement within 90 Days (or such other extended period as mutually agreed by the Parties) after the receipt of the Expert Committee Notice, then such dispute shall be submitted to arbitration and shall be finally determined in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof.

II. The arbitration shall be by a three-member arbitral tribunal comprising one arbitrator appointed by each of the Parties, which appointment shall be made within fifteen (15) days of the first request for arbitration, and the two arbitrators so appointed, appointing the third arbitrator, who shall be the presiding arbitrator appointed in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof. Provided neither Party shall nominate any of their employees as arbitrator.

III. The venue of arbitration shall be Chennai and the language of arbitration shall be English.

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

V. Prior to commencement of arbitration, the arbitral tribunal shall first determine at an initial meeting: -

a) The arbitrators fees

b) Period of completion of the arbitration process

28. Miscellaneous provisions

28.1. Amendments etc.

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

28.2. Survival of obligations

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

28.3. Agreement to override other agreements; conflicts

This Agreement constitutes the entire agreement between the Licensee and the Licensor concerning the subject matter hereof. This Agreement supersedes all previous agreements or arrangements between parties, including any memoranda of understanding entered into in respect of the contents hereof, and represents the entire understanding between the parties in relation thereto.

28.4. No waiver; remedies

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

28.5. Severance of terms

If any provisions of this Agreement are declared invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

28.6. Joint responsibility

In the event that any damage is caused in part only due to the negligence or default or omission on the part of the Licensor and in part only due to the negligence or default or omission on the part of the Licensee. Each Party shall be liable to the other Party only in proportion to its respective degree of negligence or default or omission as the case may be.

28.7. Language

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

28.8. Notices

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

Kamarajar Port Limited Chennai

SICAL LOGISTICS TERMINALS LIMITED CHENNAI

LICENSOR:

Chairman cum Managing Director
Kamarajar Port Limited
4th Floor, erstwhile DLB Building,
Near Clive Battery Bus Stop,
Rajaji Salai,
Chennai -600001

LICENSEE:

Managing Director
Sical Iron Ore Terminals Limited
South India House,
73, Armenian Street
Chennai – 600 001.

or such other address, telex number or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing to the adoption thereof.

28.9. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and subject to Section 27 above, the Courts at Chennai, Tamil Nadu, India shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement.

28.10. Several Obligations

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever except as expressly provided in this Agreement. The Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations solely in accordance with the provisions of this Agreement.

28.11 Original document

This Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

Kamarajar Port Limited Chennai

SICAL IRON ORE TERMINALS LIMITED CHENNAI

IN WITNESS HEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For and on behalf of
Kamarajar Port Limited

WITNESS:

1. M. Gurunathan S/o G. Murugan, KPL, Chennai 120

2. V. Krishnamurthy, GM (Operations), Kamarajar Port Ltd.

For and on behalf of
Sical Iron Ore Terminals Limited

WITNESS:

1. T-6 Ulaganathan
C/o Sical Logistics Ltd
93, Anna Avenue, Chennai-1

2. S. Shankar (S. SHANKAR)

Appendix 1: Letter Of Intent (LOI dated 2nd June 2016)

Kamarajar Port Limited Chennai

SICAL IRON ORE TERMINALS LIMITED CHENNAI

காமராஜர் துறைமுக நிறுவனம்
कामराजर पोर्ट लिमिटेड
Kamarajar Port Limited
(erstwhile Ennore Port Limited)
(A Mini Ratna Government of India Undertaking)

KPL/OP/3.12/85 **Date: 2nd June 2016**

SICAL Iron Ore Terminal Limited,
73, Armenian Street,
Chennai – 600 001

Kind Attn: Capt.K.N.Ramesh,Managing Director

Sir,

Sub: **Modification of existing Iron Ore Terminal on "as is where is" to also handle common user coal at Kamarajar Port Limited on DBFOT basis –Issue of Letter of Intent-Reg**

Ref: **1. RFP document No.KPL/DBFOT/01/2015 dated 22.12.2015**
2. Your RFP document submission No. Nil dated 20.01.2016
3. Your Deed of Undertaking dated 12.01.2016.

With reference to the above, Kamarajar Port Limited is glad to inform you that,

1. Your consortium represented by SICAL Iron Ore Terminal Limited is selected as the Preferred Bidder for the **Modification of existing Iron Ore Terminal on "as is where is" to also handle common user coal at Kamarajar Port Limited on DBFOT basis** with the quoted **Revenue Share @ 52.524%** by this Letter of Intent issued on the 2.6.2016, subject to:
   a. signing of the Licence Agreement within 45 days of issue of this Letter of Intent and
   b. furnishing of Performance Guarantee of Rs.4.60 Crores (Rupees Four Crores and Sixty Lakhs) within 15 days of execution of Licence Agreement as per the format in Appendix 2 of the Licence Agreement.

2. In case you do not comply in full, with the requirements of this Letter of Intent and as specified in para-1 above, without prejudice to any of the rights of Kamarajar Port Ltd under the terms of the tender No.KPL/DBFOT/01/2015 dated 22.12.2015, Your selection as the Preferred Bidder as communicated by this letter will stand forthwith cancelled;

3. Besides you are also requested to submit (1)Letter of Commitment of Promoters and (2)Capital Structure of Project Cost of Rs.581.68 Crores as per the Licence Agreement before the commencement of zero date of the project.

Registered Office & Trade Facilitation Centre :
4th Floor, Super Speciality Diabetic Centre
(erstwhile DLB Building)
Rajaji Salai, Chennai - 600 001.
Ph : 044-25251666-70 Fax : 044-25251665
CIN: U45203TN1999GOI043322

पंजीकृत कार्यालय & व्यवसाय सुविधा केन्द्र :
चौथी मंजिल, सुपर स्पेशालिटी डायबेटिक सेन्टर,
(डी एल बी बिल्डिंग)
राजाजी सलाई, चेन्नई-600 001.
फोन : 044-25251666-70 फैक्स : 044-25251665

Port Office : Vallur Post, Chennai-600 120
Ph : 044-27950030-40 Fax : 044-27950002

पोर्ट कार्यालय : वल्लूर पोस्ट, चेन्नई-600 120
फोन : 044-27950030-40 फैक्स : 044-27950002

website : www.ennoreport.gov.in e-mail : info@epl.gov.in
Kamarajar Port - India's Port of the Millennium

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Kindly return a signed copy of this letter acknowledging your unconditional acceptance of this Letter of Intent and comply with the requirements specified in this Letter of Intent as stipulated above expeditiously.

We wish you all the best for the successful implementation for the project.

Thanking you,

Yours faithfully

02/08/2016

V. Krishnasamy
General Manager (CS & BD)
Kamarajar Port Limited

We confirm our unconditional acceptance of this Letter of Intent and undertake to abide by the terms and conditions outlined herein.

08/07/2016

Authorised Signatory
SICAL Iron Ore Terminal Limited

Date: 08/July/2016.

Appendix 2: Format for Performance Guarantee

THIS GUARANTEE dated, [___] day of [___],("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Kamarajar Port Limited, a company incorporated under the Companies Act, [insert year] with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as prospective developer in respect of **modification of existing iron ore terminal to also handle common user coal** (herein after referred as "Project");

The Licensor and the Licensee have entered into a Licence Agreement dated [___] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to construct the Project within 12 months from the Zero Date in accordance with the terms of the Agreement.

Pursuant to the Award of Licence the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely provision of the Construction Guarantee, before, on or after 3 Business Days after declaration of Zero Date as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of **Rs. 4,60,00,000 (Rupees Four Crores Sixty Lakhs Only)**, upon receipt of the Licensor demand in writing and written statement stating:

a) that the Licensee has failed to fulfil its obligations under the Agreement, and

b) the amount of guarantee to be encashed as per the provisions of the Agreement.

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or not withstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state.

IV. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

Kamarajar Port Limited Chennai

CHENNAI

V. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of the Agreement the Licensor may invoke the Guarantee, at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under the Agreement.

VI. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time including the time of invoking this Guarantee by the Licensor, or thereafter any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VII. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VIII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

IX. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and/or the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

X. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

XI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper construction of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee of or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause (viii) would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XII. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XIII. This Guarantee shall remain in full force and effect from the Date of Award of Licence until the furnishing of the Construction Guarantee by the Licensee.

XIV. This Guarantee shall be valid for an initial period of [six months] from the Date of Award of Licence and shall be renewed 30 days prior to the expiry of any six month term, for additional terms of [six months each or part thereof]

XV. In the event this Guarantee is not renewed in the manner provided in sub-clause XIV above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___],

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Kamarajar Port Limited Chennai

SICAL LOGISTICS TERMINALS LIMITED CHENNAI

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Appendix 3: Certificate of Incorporation



Form 1

Certificate of Incorporation

Corporate Identity Number : U13100TN2006PLC061022 2006 - 2007

I hereby certify that SICAL IRON ORE TERMINALS LIMITED is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is limited.

Given under my hand at Chennai this FIFTH day of SEPTEMBER TWO THOUSAND SIX.



Asst Registrar of Companies
Tamil Nadu, Chennai





Appendix 4: Memorandum of Understanding

Not Applicable. However, the copy of the Shareholding Agreement will be enclosed.

Appendix 5: Schedule for Handover of the Licensed Premises

The following Assets/Licensed Premises (indicative) shall be handed over to the Licensee:

i. Waterfront area for jetty construction

ii. Right of way for conveyor

iii. Land area

Appendix 6: Licensed Premises

The Licensed Premises to be handed over to the Licensee will be jointly surveyed by the representatives of the Licensor and Licensee. The indicative list of the premises is as under:

- Waterfront area and Land area aggregating to around 47 ha already allotted to SIOTL shall be made available by the Licensor

Kamarajar Port Limited Chennai

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Appendix 7: Project Details

1. INITIAL MINIMUM REQUIREMENTS

The system shall be designed to achieve a minimum throughput of 12 MTPA. Adequate provisions may be kept for expansion of capacity. The requirements of the various sub-systems are given below.

2. BERTH, ACCESSORIES AND APPROACH TO SHORE

The berth shall be capable of handling vessels of upto 160,000 DWT vessels having LOA of 290-m beam of 45-m and loaded draught of 16.5-m. An along side depth of -18 m CD will be initially provided by the Licensor. The Licensee has already built the berth in terms of length and a return berth of 50m parallel to the shore line at the shore end of the berth to facilitate handling of various types of vessels such as RO/RO. The cargos that can be handled at this return berth will always be subject to KPL's prior approval and will exclude cargoes towards which KPL may have exclusivity commitments at other terminals.

The berth has already been provided with necessary accessories (fenders, bollards).

The berth will be equipped with equipment, conveyors for the transfer of cargo from berth to the stackyard vice versa located at a distance of about 2.5 km to the berth and the associated facilities / services.

A suitable approach to the shore will be required to connect the berth to the shore.

The berth shall be of open type piled construction with RCC superstructure.

3. CARGO HANDLING EQUIPMENT AT BERTH

- Shore based unloaders of suitable design and capacity for handling cargo at the berth simultaneously.
- Main conveyors of suitable capacity for transferring cargo to the stackyard from the ship unloaders.

4. CONVEYORS CONNECTING BERTH TO STACKYARD

The conveyor system shall transfer the cargo between the berth and the stackyard. The land conveyor from the berth and the-stackyard will be about 2.5 km long and installed along the conveyor corridor. The conveyor structure from the berth up to the stackyard will be aligned along the conveyor corridor and elevated suitably across the roads and railway lines to permit road and rail traffic underneath. The conveyor should be covered to prevent blowing of dust and degrading the environment.

5. STACKYARD

There is no storage space available adjoining the berth. The stackyard is located west of Ennore creek, at a distance of about 2.5 km from the berth outside the Port boundary wall. The stackyards for the proposed as well as existing coal terminals are adjacent to each other as they share the common rail connectivity. The area of the stackyard is about 50 Ha. However, land if required in excess of 50 Ha will be allotted subject to availability.

The Licensor will not undertake compaction of the placed material. The Licensee shall identify in the DPR the exact area requirement of the stackyard. The Licensee is to design and provide suitable pavement in the stackyard taking into consideration the bearing capacity, soil strength characteristics etc of the ground.

The Licensee will design the appropriate storage system to suit the type and mix of different grades of cargo, number of users, parcel sizes, layout of railway sidings and handling facilities. Based on the evacuation modes and throughput expected, the Licensee will plan and install the equipment in the yards.

Kamarajar Port Limited Chennai

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6. STACKING AND RECLAIMING SYSTEM

Suitable system may be proposed in the DPR. The system proposed should meet the minimum specified throughput and should be upgradeable to higher throughputs.

7. WAGON LOADING SYSTEM

Suitable system may be proposed in the DPR after due discussions with the Indian Railways and the trade. The system proposed should meet the minimum specified throughput and should be upgradeable to higher throughputs.

8. RAILWAY YARD

KPL will provide rail connectivity through a siding connecting to the nearby main lines of the Indian Railway System to the boundary of the Licensed Premises at the stack yard. It is the responsibility of the Licensee to plan and provide the rail operation facilities inside his yard premises for the receipt of empty rakes & dispatch of loaded rakes after loading of cargo.

The Licensee shall receive/dispatch from/to the Railways the empty/loaded cargo rakes at the Reception and Dispatch (R & D) yard in his stackyard. The movement of rail rakes/wagons for loading is the responsibility of the Licensee. For this the Licensee shall provide and maintain necessary locomotive(s) and other equipment. The trains shall be handed back to the Railways at the R & D yard after loading.

The Licensee shall plan all the facilities in the yard required for railway operations in consultation with and as per requirements of Railways and shall obtain approval of the Railway authorities as and when required before commissioning and also at required intervals during the License period.

9. ROADS

KPL will provide road access upto the boundary limits of the Licensed Premises. Within the boundary limits, the required roads will be constructed and maintained by the Licensee.

10. UTILITIES

10.1 Fire Fighting

The Licensee will plan and install comprehensive fire fighting equipment, fire hydrants etc. as prescribed under the relevant standards for the terminal.

10.2 Pollution Control Measures

The Licensee shall provide and implement various pollution control measures as specified in the various environmental protection policies and Acts / Rules as under:

- The Water (Prevention and Control of Pollution) Act 1974 and subsequent amendments
- The Air (Prevention and Control of Pollution) Act 1981 and subsequent amendments
- The Environment Protection Act 1986
- The Environment Rules 1986

Most of European countries adopt a system known as BATNEEC (Best Available Techniques (or Technologies) Not Entailing Excessive Cost) for environmental protection. The concept has been clearly defined in the UK Department of Environment Guidance on Integrated Pollution Control. In fact, the Secretary of State for the environment issues guidance for cargo handling which recommends a number of infrastructure and operational innovation for minimising or preventing dust emissions. The general recommendations of cargo handling are as under:

- Avoiding spillage and maintaining high standards of cleanliness in the berth area, conveyor corridor and stackyard.
- Dampening materials, cleaning and wetting of road surfaces, sheeting and washing of lorries;

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- Enclosure of plant and specific operations, particularly at transfer points and feed chutes;
- Minimising drop heights;
- Using chutes to reduce free fall;
- Dust extraction to suitable receptors, such as bag filters;
- Landscape bunds, vegetation or wind fences;
- Training staff at all levels.

Environment protection measures shall be in line with MOEF / Pollution Control Board guidelines. The Licensee may also keep in view the BATNEEC recommendations while formulating the Environmental Protection Plans. The BATNEEC recommendations are not mandatory.

Apart from the above, the Licensee will develop green belts in and around the stackyard area to comply with the environmental requirements.

10.3 Services

Electric Supply:

The Licensee has arranged for power supply from TNEB directly. KPL has provided a common substation for all terminals. The Licensee shall provide all the fittings in the terminal.

Lighting: The Licensor will undertake general lighting of the Port. The lighting within the Licensed Premises would be the responsibility of the Licensee.

Water Supply: The Licensee has to make his own arrangements. For water, bore holes with appropriate approvals can be planned by the Licensee. Licensee may also contact Chennai Metrowater Supply and Sewerage Board regarding plans for water supply to the area.

Bunkering: The bunkering will be available through an agency nominated by KPL. Licensee or Shipping Lines can avail this facility.

10.4 Other Support Facilities

Any other facilities required for the development and operation of the Terminal will have to be arranged by the Licensee.

10.5 Security Arrangements

CISF looks after general security of the port and manning the gates. The Licensee shall abide by the security regulations / procedures as stipulated by the Licensor from time to time. The Licensee shall provide his own security arrangements for his assets.

11. COMPLETION PERIOD

The completion period of the Project shall be as per the Licence Agreement.

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Appendix 8: Guidelines for Design

1. SIZE OF DESIGN VESSEL

The size of design vessel for the design of the berth structures will be 1,60,000 DWT. The bidders have an option of upgrading the berth to suit handling of bigger vessels. The initial design shall have necessary provisions.

2. CODES AND STANDARDS

The planning and designing of the berthing structures and other port facilities shall be as in accordance with the applicable Indian codes and standards. Whenever, Indian Standards are not available for a particular application, other reputed International Codes or guidelines can be used..

3. PERFORMANCE STANDARDS

The total system shall be adequate to meet the annual capacity specified for the Initial Minimum Requirements, as well as for subsequent augmentations. The vessel turn around time should be specified in the DPR.

4. APPLICABLE CODES AND STANDARDS

The recommended codes and standards for the planning and designing of the terminal are indicated below. Additional codes and standards shall be referred to if required.

4.1 Indian standards for ports and harbours;

1	IS 7314-1974	Glossary of terms relating to Ports and Harbour engineering.
2	IS 4651 (Part I) 1974	Code of Practice for planning and design of ports and harbours (Part I – Site investigation)
3	IS 4651 (Part II) 1989:	Code of Practice for planning and design of ports and harbours (Part II – Earth Pressures).
4	IS 4651 (Part III) 1974:	Code of Practice for planning and design of ports and harbours (Part III- Loading)
5	IS 4651 (Part IV) 1989	Code of Practice for planning and design of ports and harbours (Part IV – General design considerations)
6	IS 4651 (Part V) 1980	Code of Practice for planning and design of ports and harbours (Part V – Layout and functional requirements)
7	IS 9527 (Part I) 1981	Code of Practice for design and construction of ports and harbour structures (Part 1- Concrete Monoliths)
8	IS 9527 (Part II) 1989	Code of Practice for design and construction of port and harbour structures (Part II – Caissons)
9	IS 9527 (Part III) 1983	Code of Practice for design and construction of port and harbour structures (Part III – Sheet Pile Walls)
10	IS 9527 (Part IV) 1980	Code of Practice for design and construction of port and harbour structures (Part IV – Cellular Sheet Pile Structures)
11	IS 9527 (Part V) 1989	Code of Practice for design and construction of port and harbour structures (Part V – Open Pile Structure)
12	IS 9527 (Part VI) 1989	Code of Practice for design and construction of ports and harbour structures (Part VI – Block Work)
13	IS 10020 (Part IV) 1981	Recommendations for planning and design of ports and harbour components (Part IV – Slipway)
14	IS 3443-1966	Specification for crane rail sections
15	IS 6426-1972	Specification for pile driving hammer

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16	IS 807-1963	Code of Practice for design, manufacture, erection and testing of cranes and hoists.

4.2 Standards for roads, bridges, reinforced concrete, etc.

1. IRC – 5 (2985)	Standard Specifications and Code of Practice for Road Bridges, Section I General Features of Design
2. IRC – 6(1966)	Standard Specifications and Code of Practice for RoadBridges, Section II Loads and Stresses
3. IS 2911	Code of practice for design and construction of pile construction.
4. IS 1893(1984)	Criteria for Earthquake Resistant Design of Structures
5. IS 875(1987)	Code of Practice for Design Loads
6. IS 800(1984)	Code of Practice for General Construction and Steel
7. IS 456(2000)	Code of Practice for Plain and Reinforced Concrete
8. IRC 21(1987)	Standard Specifications and Code of Practice for Road Bridges, Section III Cement Concrete Plain and Reinforced
9. IRC 22(1986)	Standard Specifications and Code of Practice for Road Bridges, Section VI Composite Construction for Road Bridges
10. SP 7 (1983)	NationalBuilding Code of India 1983(2001)
11. SP 23(S&T) 1982	Handbook on Concrete Mixes
12.SP 24(S&T) 1983	Explanatory Handbook on Indian Standard Code for Plain and Reinforced Concrete
13.SP 34(S&T) 1987	Handbook on Concrete Reinforcement and Detailing

4.3 International standards for ports and harbours

1. BS 6349 British Standard Code of Practice for Maritime Structures
    1. Part 1 – 1984 General Criteria
    2. Part 2 – 1988 Design of Quay Walls, Jetties and Dolphins
    3. Part 3 – 1988 Design of Dry Docks, Locks, Slipways and ShipBuilding Berths, Ship Lifts and Dock and Lock Gates
    4. Part 4 -1994 Design of Fendering and Mooring Systems
    5. Part 5 – 1991 Code of Practice for Dredging and Land Reclamation
    6. Part 6 – 1989 Design of Inshore Mooring and Floating Structures
    7. Part 7 – 1991 Guide to the Design and Construction of Breakwaters
2. BS 8002 – Code of practice for Earth Retaining Structures.
3. EAU- 1996 Recommendations of the Committee for Waterfront Structures, issued by the (West German) Society for Harbour Engineering and the German Society for Soil Mechanics and Foundation Engineering – VIIth English Edison
4. Technical Standards for Port and Harbour Facilities in Japan – 1980, The Overseas Coastal Area Development Institute of Japan
5. Manual on the Use of Rock in Coastal and Shoreline Engineering – 1991,
    1. Construction Industry Research and Information Association Special Publication 83 (1991)
    2. Centre for Civil Engineering Research and Codes – CUR Report 154
6. British Ports Association (1983) – Design of Heavy Duty Pavements for Ports

7. British Pre Cast Concrete Federation Ltd., (1996) - Design of Heavy Duty Pavements for Ports and other Industries
8. U.S. Army Corps of Engineers (1984) – Shore Protection Manual – Volume I to III
9. Oil Companies International Marine Forum (OCIMF)- Guidelines and Recommendations for the Safe Mooring of Large Ships at Piers and Sea Islands
10. Louis Y Pouliquen(1970) – Risk Analysis in Project Appraisal IBRD

4.4 Electrical equipments and installations

The Standards / Guidelines issued by the following organisations may be followed:

1. NEC: National Electrical Code
2. NEMA: National Electrical Manufacturers Association
3. ANSI: American National Standard Institute
4. IEC: International Electro Technical Commission
5. IS: Indian Standard
6. API: American Petroleum Institute
7. Illumination Engineering Society Hand Book

Kamarajar Port Limited Chennai

Appendix 9: Format for Construction Guarantee

THIS GUARANTEE dated, [___] day of [___], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Kamarajar Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as prospective developer in respect of modification of existing iron ore terminal to also handle common user coal;

The Licensor and the Licensee have entered into a Licence Agreement dated [___] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to construct the Project within 12 months from the Zero Date in accordance with the terms of the Agreement.

Pursuant to Section 9 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper construction of the Project as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of **Rs. 11.46 Crore (Rupees Eleven Crore and Forty Six Lakhs only)**, upon receipt of the Licensor demand in writing and written statement stating:

a) that the Licensee has failed to fulfil its obligations under the Agreement, and

b) the amount of guarantee to be encashed as per the provisions of the Agreement.

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or not withstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this

Kamarajar Port Limited Chennai

SEAL IRON ORE TERMINAL LIMITED CHENNAI

IV. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of the Agreement the Licensor may invoke the Guarantee, in part or in full, at any time as it deems fit but not less than monthly intervals and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under the Agreement.

V. In case the Licensor invokes the Guarantee in parts as per the provisions of Article IV of the Guarantee, the Guarantor undertakes to keep the Guarantee valid for the amount equal to **Rs. Rs. 11.46 Crore (Rupees Eleven Crore and Forty Six Lakhs only)** less invoked amount of the Guarantee.

VI. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time including the time of invoking this Guarantee by the Licensor, or thereafter any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VII. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VIII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

IX. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and/or the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

X. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

XI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper construction of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee of or security for any of the obligations of the Licensee under the Agreement;

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CHENNAI

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause (viii) would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XII. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XIII. This Guarantee shall remain in full force and effect from the Zero Date until the issue of the Completion Certificate. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIV. This Guarantee shall be valid for an initial period of [one year] and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof]

XV. In the event this Guarantee is not renewed in the manner provided in sub-clause XIV above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Kamarajar Port Limited Chennai

CHENNAI

Appendix 10:
Commercial proposal as submitted by the Licensee

Enclosed

Kamarajar Port Limited Chennai

CHENNAI

Sical Iron Ore Terminals Ltd.
South India House
73 Armenian Street
Chennai 600 001 India

SICAL

COMMERCIAL PROPOSAL

Date: 20-Jan-2016
Place: Chennai

The Chairman-cum-Managing Director
Kamarajar Port Limited
4th Floor, erstwhile DLB Building
Near Clive Battery Bus Stop
Rajaji Salai,
Chennai – 600 001

01/02/2016 GM (C&BD)

01/02/2016 GM (O)

01-2-2016.

Dear Sir,

Sub: Commercial Proposal for selection of a Developer for Modification of existing Iron Ore Terminal on "as is where is" to also handle Common User Coal at Kamarajar Port Limited (erstwhile Ennore Port Limited), Chennai, India on DBFOT Basis

1. We, the undersigned Eligible Bidder, submit the following as our Commercial Proposal in response to the RFP issued by KPL.

	% of Gross Revenue	
Revenue Share	In numerals* 52.524%	In words* FIFTY TWO POINT FIVE TWO FOUR PERCENT.

*No. of units to be indicated in this column. For evaluation, the number mentioned will be considered as the percent of Gross Revenue, even if any other units are indicated. Reserve Revenue Share shall be reserve price for submission of Commercial Proposal.

2. We confirm that our Commercial Proposal confirms to all the terms and condition stipulated in the Request for Proposal.

3. We confirm that our Commercial Proposal is final in all respects and contains **no** conditions

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4. We confirm that in the event of more than one responsive Bidders quoting the same price bid, KPL shall break the tie by inviting a revised Commercial Proposal from the concerned bidders as described in section 5.2(c).

5. We confirm that KPL shall have the option to invite the next highest ranked bidder for negotiations, and such decision would be final and binding, in the event -

   a. We fail or refuse to make full payments of the Upfront Amount[1] within the stipulated time (viz. 45 days from the issue of Letter of Intent to it) and/or

   b. We fail or refuse to execute the License Agreement within the stipulated time

   c. We commit a material breach of any of the terms and/or conditions contained in the RFP and/or subsequent communication from KPL in this regard

6. We confirm that the information submitted in our Commercial Proposal is complete and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omission in our Proposal.

7. We confirm that we have studied the provisions of relevant Indian Laws and Regulation required to enable us to prepare this Commercial Proposal and as required for Modification of existing Iron Ore Terminal on "as is where is" to also handle Common User Coal on DBFOT Basis at Kamarajar Port, in the event we are finally selected.

Thanking you,

Yours sincerely,

For and on behalf : M/s. Sical Iron Ore Terminals Limited

Signature :

Name of the Person : Capt. K.N. Ramesh

Designation : Managing Director

[1] This is not applicable to SIOTL as stipulated in Section 5.4 of RFP

Appendix 11:
Financing Documents
and
Original Schedule of Debt Servicing
as
Approved by the Licensor

To be submitted after Financial Closure

Appendix 12: Format for Maintenance Guarantee

THIS GUARANTEE dated, [___] day of [___], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Kamarajar Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of modification of existing iron ore terminal to also handle common user coal;

The Licensor and the Licensee have entered into a Licence Agreement dated [___] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has designed, constructed, engineered, financed, operated, maintained the Terminal in accordance with the terms of the Agreement and will continue operation and maintenance of the Terminal as per the provisions of the Agreement till the Scheduled Date of Transfer.

Pursuant to Section 18.2.13 of the Agreement, the Licensee has undertaken to furnish to the Licensor an irrevocable and unconditional bank guarantee as security for timely and proper maintenance of the Project and other obligations under the Agreement as per the provisions of the Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums not exceeding in total the amount of Rs. 11.63 Crore (Rupees Eleven Crore and Sixty Three Lakhs Only) estimated as per the provisions Section 18.2.13 of the Agreement, upon receipt of the Licensor demand in writing and written statement stating that the Licensee has failed to fulfil its obligations as per the provisions of Section 14.2.2 and/or Section 18.2.12 and/or Section 22.3.6IVof the Agreement.

III. The Guarantor does hereby unconditionally and irrevocably guarantees and undertakes, without any reference to the Licensee or any other person and irrespective of, or notwithstanding, the fact whether any dispute is pending between the Licensor and the Licensee before any court, tribunal, expert, arbitrator or similar proceedings relating thereto, to pay the amount due and payable under this Guarantee without any demur or protest, merely on a first written demand from the Licensor to the effect that such amount is due to the Licensor from the Licensee in accordance with the terms of the Agreement or for any other reason that the Licensor may state. Any such demand made on the Guarantor shall be conclusive, absolute and unequivocal evidence as regards the amount due and payable by the Guarantor under this Guarantee.

IV. Upon any default, whatsoever by the Licensee in performing, meeting or otherwise complying with the provisions of Section 14.2.2 and/or Section 18.2.12 and/or Section 22.3.6IVof the Agreement, of the Agreement the Licensor may invoke the Guarantee, in part or in full, at any

time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Licensee. The Licensor shall, at all times, have the absolute and unconditional right to call upon the Guarantee at any time it is convinced, at its sole discretion, that there has been a breach or failure on the part of the Licensee or its agents to fulfil or meet any of the obligations under Section 14.2.2and/or Section 18.2.12 and/or Section 22.3.6IVof the Agreement.

V. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

VI. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

VII. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VIII. Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

IX. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

X. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely and proper maintenance of the Project as per the provisions of the Agreement;

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

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f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

XI. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

XII. This Guarantee shall remain in full force and effect from two years prior to the expiry of the Licence upto a time of 1 (one) year after the Scheduled Date of Transfer **(Date to be Inserted on signing of Agreement)** as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XIII. This Guarantee shall be valid for an initial period of [one year] and shall be renewed 30 days prior to the expiry of any one year term, for additional terms of [one year each or part thereof] until [1 (one) year after the Scheduled Date of Transfer].

XIV. In the event this Guarantee is not renewed in the manner provided in sub-clause XIII above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

Appendix 13: Format for Payment Guarantee

THIS GUARANTEE dated, [___] day of [___], yyyy ("the Guarantee") is issued by [___], a banking company incorporated under the laws of [___] and having its registered office/ [principal place of business] at [___] (hereinafter referred to as "the Guarantor" which expression includes its successors and assigns) for the benefit of and in favour of Kamarajar Port Limited, a company incorporated under the Companies Act, 1956 with its registered office at Chennai (hereinafter referred to as "the Licensor", which expression includes its successors and assigns).

WHEREAS:

XXXX a company incorporated and registered in India under the Companies Act, 1956 and having its registered office at _____, hereinafter referred to as the Licensee, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns), has successfully bid and has been selected as developer in respect of modification of existing iron ore terminal to also handle common user coal;

The Licensor and the Licensee have entered into a Licence Agreement dated [___] (hereinafter referred to as "the Agreement" as the same may be amended, modified and novated from time to time) pursuant to which the Licensee has agreed to develop the Project in accordance with the terms of the Agreement.

Pursuant to Section 17.1 of the Agreement, the Licensee has undertaken to furnish to the Licensor a bank guarantee as security for

(i) timely Revenue Share payments the Licensor as per the provisions of the Agreement; and/or

(ii) timely payments of any other dues payable to the Licensor as per the provisions of the Agreement; and/or

(iii) timely payments of any claims by the Licensor on the Licensee; and/or

(iv) recovery by Licensor of any and all amounts payable and due to the Licensor from the Licensee as per the provisions of the Agreement; and/or

(v) as security for performance of any and all obligations under this Agreement.

The Licensee has accordingly directed the Guarantor to issue this irrevocable and unconditional Guarantee and the Guarantor has agreed to issue this Guarantee for the benefit of and in favour of the Licensor to guarantee guaranteed obligations stated herein on the terms set forth hereunder.

NOW THEREFORE THIS DEED OF GUARANTEE WITNESSETH AS UNDER

I. For the purpose of this Guarantee, capitalised terms used herein but not otherwise defined herein shall have the respective meaning ascribed to such terms under the Agreement.

II. The Guarantor does hereby unconditionally and irrevocably guarantee to pay to the Licensor without any demur or protest merely on first demand, without any previous notice, and without referring to any other source, any sum or sums as so notified by the Licensor, not exceeding in total the amount of Rs. 10.05 Crore (RupeesTen Crore and Five Lakhs Only) estimated as per the provisions of the Agreement, upon receipt of the Licensors demand in writing and written statement stating any of the following:

a) that the Licensee has failed to pay the Revenue Share and other payments in accordance with Section 17 of the Agreement;

b) that the Licensee has failed to meet its obligations under Section 18.2.12 and/or Section 22.3.6IVof the Agreement;

c) that the Licensee has failed to pay/reimburse any payments/compensation/claims for damages, due to the Licensor in accordance with any of the Sections under this Agreement;

d) the Licensor has issued a Transfer Information Notice

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III. For the avoidance of doubt, it is clarified that this Guarantee or the rights of the Licensor hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time of invoking this Guarantee by the Licensor, or thereafter exits any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Agreement between the Licensee and the Licensor.

IV. The Guarantor, as primary obligor and not merely as surety or guarantor of collection, shall be under no duty, and shall not have any right, to inquire into the matters referred to in any written demand issued by the Licensor or into the terms of the Agreement or any other circumstances, matters or documents. The decision of the Licensor as to any breach having been committed, liabilities accrued or loss or damages caused or suffered shall be conclusive, absolute and binding on the Guarantor. The Guarantor specifically confirms and agrees that no proof of any amount due to the Licensor under the Agreement is required to be provided, in connection with any demand made by the Licensor for payments under this Guarantee and that no documents or other action shall be required other than the Licensor's written demand as aforesaid, notwithstanding any applicable law or regulation.

V. The Guarantor hereby waives any right whatsoever that it may have of requiring the Licensor to pursue legal remedies against the Licensee or against any other security that may be available to the Licensor.

VI. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that the Agreement may be modified, amended and supplemented by the Licensee and the Licensor in accordance with the terms of the Agreement without the Guarantor's consent in any manner and that no such modification, amendment or supplement shall release, affect, limit, mitigate or impair the Guarantor's liability under this Guarantee.

VII. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever and by whomsoever imposed.

VIII. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a guarantor hereunder:

a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement, or the insolvency, bankruptcy, reorganisation, dissolution, winding up or liquidation of the Licensee or any change in the ownership of the Licensee, or any purported assignment by the Licensee or any other circumstances whatsoever which might otherwise constitute a defence or discharge of a guarantor or surety;

b) shall constitute a present and continuing guarantee of timely payments of Revenue Share and/or any other payments and/or any other claims due to the Licensor as per the provisions of the Agreement and/or performance of the Licensees obligations under Section 18.2.12 and/or Section 22.3.6lVof the Agreement.;

c) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Licensee under the Agreement;

d) shall not be affected by any failure by the Licensor to perform any of its obligations under the Agreement;

e) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

f) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Licensee under the Agreement;

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g) shall not be affected by any failure, omission or delay on the Licensor's part to enforce, assert or to exercise any right, power or remedy conferred on the Licensor in this Guarantee;

h) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

IX. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

X. This Guarantee shall remain in full force and effect throughout the Operations Phase as per the provisions of the Agreement. It is clarified that the Licensor shall be entitled to file a claim under this Guarantee upto a period of six months from the expiry of the Guarantee, provided such claim relates to the period of validity of the Guarantee.

XI. This Guarantee shall be valid for an initial period of [six months] and shall be renewed 30 days prior to the expiry of any one six month term, for additional terms of [six months each or part thereof].

XII. In the event this Guarantee is not renewed in the manner provided in sub-clause XI above, such non-renewal shall constitute an event of default, and [the guaranteed amount] shall become immediately payable and shall be transferred to the Licensor [by the Guarantor issuing in favour of the Licensor, a demand draft payable at [ ]].

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

IN WITNESS WHEREOF this Guarantee has been duly executed on this [___] day of [___], yyyy.

Guarantor

Acknowledged and accepted

[The Licensee]

[The Licensor]

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CHENNAI

Appendix 14:Lease Rentals for Land

1 Description of land

The Land (Schedule Property) to be handed over to the Licensee will be jointly surveyed by the representatives of the Licensor and Licensee and the lease rentals as per the notified tariff will be as per the measured area. The Schedule Property comprises the following

Sr.No.	Total Area in Hect.	Survey no. of Land	Boundaries	Name of village

2 Base rent rate

The Base rent rate (as on 01.01.2014) for the Schedule Property shall be Rs 132/- per square meter or part thereof per year (calendar year) or part thereof and shall be valid for a period of 5 (five) years

The Base rent rate shall be revised at the end of 5 years for the following five year period, based on commercial principles as adopted by the Lessor.

Accordingly, the applicable rent rate is Rs.145.53/- per Sqm from 01.01.2016 to 31.12.2016 thereafter 5% escalation is applicable upto revision of base lease rate.

3 Revision of Rent

The Rent shall be computed as a product of the rate as described in this section and the total land area of the Schedule Property

The rate for the first year shall be equal to the Base rent rate. The rate for the year immediately following revision of the Base rent rate, shall be equal to such revised Base rent rate. The rate for all interim years between the years of revision of Base rent rate shall be calculated based on a 5% increase on the previous years rate and shall be computed as:

Rent for following year = Rent for previous year X 1.05

4 Time for payment of rent

The rent shall be payable by the Licensee as per the provisions of Section 17 VI of the Licence Agreement. Any sum of rent due whether from the Licensee or sub-lessee shall be recoverable as arrears of land revenue without prejudice to the rights and powers of the Licensor under the Licence Agreement or any other law for the time being in force.

5 Use of Schedule Property

The Schedule Property shall be used for the sole purposes of developing, constructing operating and maintaining the Terminal, for related and incidental activities and providing services to the users in accordance with the terms of the Licence Agreement.

6 Payment of other taxes, charges etc.

All taxes, licence and other charges, dues, assessments, levies or outgoings payable including but not limited to stamp duties, registration charges and other incidental expenses if any, in respect of the Schedule Property or the structures to be constructed thereon or in respect of the materials stored therein which may be levied by any Government, local authority or other persons shall be payable by the Licensee and the Licensee shall fully indemnify the Licensor of all liabilities in this regard.

Appendix 15: Joint and Several Liability Commitment

(To be executed on appropriate value of Non-Judicial Stamp Paper of value Rs.100)

Not Applicable

Appendix 16:
Contracted Assets

To be updated later if any such assets are there

Appendix 17: Substitution Agreement

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

AMONGST,

THE **KAMARAJAR PORT LIMITED**, a company incorporated and registered in India under the Companies Act, 1956 and having its Administrative Office at 4th Floor, erstwhile DLB Building, Near Clive Battery Bus Stop, Rajaji Salai, Chennai – 600 001 (hereinafter referred to as **"the Licensor"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. XXXX Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at ---------- hereinafter referred to as **"the Licensee"** (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ---------- ---------- hereinafter referred to as **"the Lender"**.

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at---------- ---------- acting for and on behalf of the Lenders listed in Schedule A hereto (hereinafter referred as **"the Lender's Representative"**.

WHEREAS,

a) The Licensor for implementing a Project envisaging Modification of the existing iron ore terminal to also handle common user coal at Kamarajar Porton DBFOT Basis (hereinafter referred to as **"the Project"**), has by the Licence Agreement dated --------- -- entered into between the Licensor and the Licensee (hereinafter referred to as **"the Licence Agreement"**) has granted to the Licensee the Licence to implement the Project in terms of the provisions set out thereunder;

b) With a view to facilitate financing of the Project by the Licensee, the Licensor and the Licensee have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

"Financial Assistance" means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Licensee for financing the Project.

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt thereunder by the Licensee for a minimum period of 3 (three) months.

"Lender(s)" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to the Licensee, from time to time.

"Residual Licence Period" means the period which shall be the remainder of the Licence Period computed from the date of issuance of Termination Notice in terms of Article 22 of the Licence Agreement.

"Selectee" means a Person proposed by the Lender/Lender's Representative pursuant to this Agreement and approved by the Licensor for substituting the Licensee for the residual Licence Period, in accordance with the provisions of this Agreement.

"Suspension Period" means the Termination Period as defined in Article 22 of the Licence Agreement at the end of which all formalities connected with substitution of the Licensee by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Agreement are completed and the substitution has become effective.

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





2. ARTICLE 2

ASSIGNMENT

2.1. Assignment of rights and title

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

3. ARTICLE 3

SUBSTITUTION OF THE LICENSEE

3.1. Rights of substitution

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

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

3.2. Substitution upon occurrence of Financial Default

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

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

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

Lenders/Lenders' Representative and the Licensee, the Licensor may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3. Substitution upon occurrence of Licensee Event of Default

3.3.1. Upon occurrence of a Licensee Event of Default, the Licensor shall by a notice inform the Lenders/Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days time to the Lenders/Lenders' Representative to make a representation, stating the intention to substitute the Licensee by a Selectee.

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

3.4. Procedure for substitution

3.4.1. The Licensor and the Licensee hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Licensor under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Licensee and taking on the rights and obligations under the Licence Agreement.

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

3.4.3. Upon selection of a Selectee, the Lenders/Lenders' Representative shall request the Licensor to:

a) accede to transfer to the Selectee the rights and obligations of the Licensee under the Licence Agreement; and

b) novate the Licence Agreement to the Selectee such that the Selectee replaces the Licensee and becomes entitled/obligated to all the rights and obligations of the Licensee for the residual Licence Period.

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

3.5. Selection to be binding

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

4. ARTICLE 4

TRANSACTION DOCUMENTS

4.1. Substitution of Selectee in Transaction Documents

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

5. ARTICLE 5

TERMINATION OF LICENCE AGREEMENT

5.1. Termination upon occurrence of Financial Default

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

5.2. Termination when no Selectee is selected

In the event that no Selectee acceptable to the Licensor is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Licensor may terminate the Licence Agreement forthwith in accordance with the provisions thereof.

5.3. Realisation of Debt Due

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

6. ARTICLE 6

DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

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

a) Termination of the Agreement; or

b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

7. ARTICLE 7

INDEMNITY

7.1. General indemnity

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

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

Kamarajar Port Limited Chennai

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

7.2. Notice and contest of claims

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

8. ARTICLE 8

GENERAL

8.1. General

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

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

iii. The expressions "Licensor", the "Licensee", the "Lender" and the "Lenders' Representative", "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.

iv. This Agreement shall not be affected by reorganisation of any Lender, the Licensee or Licensor, "Selectee" and the successor in interest of the Lender or Licensor shall have the benefit of this Agreement.

v. Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Licensor and the Lenders/Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint

a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

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

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

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

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

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

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

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

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

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

Kamarajar Port Limited Chennai

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

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

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OFGOVERNMENT OF INDIA

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF ---------- ON BEHALF OF THE LENDERS SETFORTH IN SCHEDULE I

BY : _____

Name :

Kamarajar Port Limited Chennai

Appendix 18: Minimum Annual Guaranteed Revenue payable by the Licensee

Year of Operation	Minimum Annual Guaranteed Revenue for 12 MMTPA Coal/Iron Ore Berth (Rs. Crore)
Year 1	10.05
Year 2	10.55
Year 3	11.08
Year 4	11.63
Year 5	12.22
Year 6	12.83
Year 7	13.47
Year 8	14.14
Year 9	14.85
Year 10	15.59
Year 11	16.37
Year 12	17.19
Year 13	18.05
Year 14	18.95
Year 15	19.90
Year 16	20.89
Year 17	21.94
Year 18	23.04
Year 19	24.19
Year 20	25.40
Year 21	26.67
Year 22	28.00
Year 23	29.40
Year 24	30.87
Year 25	32.41
Year 26	34.04

CONCESSION AGREEMENT

BETWEEN

KAMARAJAR PORT LIMITED

(THE CONCESSIONING AUTHORITY)

AND

ADANI ENNORE CONTAINER TERMINAL PRIVATE LIMITED

(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF CONTAINER TERMINAL AT KAMARAJAR PORT ON DBFOT BASIS



15th MARCH 2014

CONCESSION AGREEMENT

BETWEEN

KAMARAJAR PORT LIMITED

(THE CONCESSIONING AUTHORITY)

AND

ADANI ENNORE CONTAINER TERMINAL PRIVATE LIMITED

(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF CONTAINER TERMINAL AT KAMARAJAR PORT ON DBFOT BASIS

15th MARCH 2014

CONCESSION AGREEMENT

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Kamarajar Port Limited Chennai

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ગુજરાત ગુજરાત GUJARAT

AG 714640

નંબર : [illegible]
તારીખ : 2/12 2014
નામ : [illegible]
ઠેકાણું : [illegible]
કે. આર. પાટડીયા
બા. નં. એસ.બી. ૨૪૯, ૨૪૭/૧૯૯૬
અમદાવાદ નારણપુરા મર્યાદી
લખાર તી સહી.....

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Chennai on this 15th **day of March 2014**

BETWEEN.

1. **Kamarajar Port Limited,** a company registered under the Companies Act, 1956 and having its Registered Office at 1st Floor, 21, Rajaji Salai, Chennai 600 001, hereinafter referred to as **"the Concessioning Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

2. **Adani Ennore Container Terminal Private Limited,** a company registered under the Companies Act, 1956, and having its registered office at Adani House, Near Mithakali Circle, Navrangpura , Ahmedabad – 380 009, Gujarat hereinafter referred to as **"the Concessionaire"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

Kamarajar Port Limited Chennai

ADANI ENNORE CONTAINER TERMINAL PVT. LTD. AHMEDABAD

WHEREAS:

(A) The Concessioning Authority is desirous of implementing a Project (as defined hereinafter) for handling 1.48 million TEU of containers per annum for container handling, through private sector participation,

(B) On 24th May 2013, the Concessioning Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project;

(C) In response to the invitation referred to in recital 'B' above, the Concessioning Authority received applications from various parties including the application dated 25th July 2013 submitted by the Applicant/ Consortium in accordance with the Request for Qualification;

(D) The Concessioning Authority, after evaluating all the applications, shortlisted 11 (eleven) number of applicants, including the Applicant/Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;

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

(F) The Concessioning Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Applicant/Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated 14th February 2014

(G) The Applicant/Consortium has/have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 to implement the Project;

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

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NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Actual Project Cost**" means the actual capital cost incurred by the Concessionaire on the Project and/or the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of the Estimated Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioning Authority.

"**Additional Auditor**" has the meaning ascribed to it in Article 9.4.

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

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

Kamarajar Port Limited Chennai

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"**Agreement**" means this agreement as of date hereof, including Appendices 1 through 16 as may be amended, supplemented or modified in accordance with the provisions hereof.

"**Appendix**" means the schedules, supplements or documents, appended to this Agreement.

"**Applicable Laws**" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgements having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement

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

"**Applicant**" means **Adani Ports and Special Economic Zone Limited**, a company registered under the Companies Act, 1956, and having its registered office at Adani House, Near Mithakhali Circle, Navrangpura, Ahmedabad – 380 009, Gujarat.

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

"**Bid Security**" means the bank guarantee no. 0009PR1401601I2 amounting to Rs. 25.40 crore issued by Industrial Bank Limited dated 6th February 2014 furnished by the Applicant alongwith its Bid.

"**Board**" means the Board of Directors of Kamarajar Port Limited.

"**Book Value**" means the aggregate written down value as on the date of issue of

Kamarajar Port Limited Chennai

ADANI ENNORE CONTAINER TERMINAL PVT. LTD. AHMEDABAD

the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessioning Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessioning Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

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

"**Change of Scope**" shall have the meaning assigned to it under Article 6.8(a).

"**Change of Scope Notice**" shall have the meaning assigned to it under Article 6.8(b).

"**Company**" or **KPL** means Kamarajar Port Limited (Concessioning Authority).

"**Completion Certificate**" shall have the meaning assigned to it under Article 6.3.

"**Concession**" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

"**Concessioning Authority Event of Default**" shall have the meaning as set out under Article 15.1(b).

"**Concessionaire Event of Default**" shall have the meaning as set out under Article 15.1(a).

"**Concession Period**" means the period of the Concession specified in Article 2.2 of this Agreement.

"**Conditions Precedent**" shall mean the conditions prescribed in ARTICLE 3 of this Agreement.

Kamarajar Port Limited Chennai

ADANI ENNORE CONTAINER TERMINAL PVT LTD AHMEDABAD

"Consortium" not applicable as there is single applicant.

"**Construction Phase**" means the period from the Date of Award of Concession to the date on which the Concessionaire receives the Completion Certificate for Phase I and Phase II respectively in accordance with the provisions of this Agreement.

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

"**Construction Standards**" means the construction standards set out in the annexure to APPENDIX 4

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

"**Contractor**" means a [1]Person with whom the Concessionaire has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services, including the Management Contractor.

"**Date of Award of Concession**" means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

"**Date of Commercial Operation**" means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement.

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

"**Debt Due**" means the aggregate of the following sums representing the amounts advanced by the Lenders towards Actual Project Cost, expressed in Indian rupees as

[1] If requested by the Concessionaire, to facilitate custom duty exemptions available to it for connected project, the names of the persons engaged as Contractors may be specified.

Kamarajar Port Limited Chennai
ADANI ENNORE CONTAINER TERMINAL PVT LTD AHMEDABAD

may be outstanding and payable to the Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the Project ("**the Principal**") but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority; and

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

"**Designs and Drawings**" means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

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

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

"**Environmental Law**" means any statute, rule, regulation, ordinance, code,

Kamarajar Port Limited Chennai
ADANI ENNORE CONTAINER TERMINAL PVT. LTD. AHMEDABAD

guideline or policy having the force of law, in each case, applicable to the Project now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

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

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

"**Escrow Account**" shall have the meaning assigned to it under Article 9.5.

"**Escrow Agreement**" means the agreement to be executed inter alia between the Concessionaire, the Concessioning Authority and the Lenders/Lenders representative substantially in the format set out in APPENDIX 16 hereto.

"**Estimated Project Cost**" means the sum of Rs **1270 crore (Rupees one thousand two hundred seventy crore only)** being the cost of the Project as estimated by the Concessioning Authority and disclosed in the Request for Proposal.

"**Event of Default**" shall have the meaning assigned to it under Article 15.1.

"**Exclusivity Period**" shall have the meaning ascribed to it in Article 12.2.(c).

"**Expert**" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

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

"**Financial Close**" means the date on which the Financing Documents providing

Kamarajar Port Limited Chennai
ADANI ENNORE CONTAINER TERMINAL PVT LTD AHMEDABAD

for Financial Assistance by the Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Applicant/Consortium have become effective and the Concessionaire has access to such Financial Assistance.

"**Financial Year**" means any twelve month period commencing from 1st April and ending on 31st March.

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

"**Financing Plan**" means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the Project submitted by the Concessionaire in accordance with Article 3.1(a)(vii).

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

"**GoI**" means the Government of India.

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

"**Government Authority**" means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Port's Assets, the Project Facilities and Services or any portion

Kamarajar Port Limited Chennai

ADANI INNER CONTINENT TERMINAL PVT LTD AHMEDABAD

thereof, but shall not include the Concessioning Authority.

"**Gross Revenue**" means all the revenues chargeable by the Concessionaire from the Project/Project Facilities and Services.

"**Independent Engineer**" means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carryout the duties, responsibilities, services and activities set forth in APPENDIX 7

"**Indian Accounting Standards**" means the Indian accounting standards issued by the Institute of Chartered Accountants of India.

"**Insurance Cover**" shall have the meaning ascribed to it in Article 12.1(c)(ii).

"**Lenders**" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Concessionaire to finance the Project.

"**License Fee**" shall have the meaning assigned to it under Article 9.1(a).

"**Management Contract**"[2] means the contract between the Concessionaire and the Management Contractor, in respect of obligations of the Management Contractor, in respect of the Project in accordance with the Request for Proposal.

"**Management Contractor**" means [●][3].- Not applicable

"**Management Control**" means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the Concessionaire, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the

[2] This definition may be included only in cases where such a contract is envisaged.
[3] This definition and the usage will be retained depending on the bid/s i.e. where the consortium meets the technical criteria on the strength of its management contractor who is not a member of the consortium. In such instances the management contractor would need to be identifiable in the contract.

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directors, managers, partners or other individuals exercising similar authority with respect to the Concessionaire.

"**Material Adverse Effect**" means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"**Milestone Dates**" means the dates for completion of specified Project activities as contained in the Project Schedule.

"**Minimum Guaranteed Cargo**" shall have the meaning ascribed to it in Article 7.1(a)(xii).

"**Month**" means the calendar month as per the Gregorian calendar.

"**MPT Act**" means The Major Port Trusts Act, 1963 as amended, supplemented, re-enacted or replaced from time to time

"**Non-Political Event**" means the Force Majeure Events set out in Article 14.2.

"**O&M Contract**" means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Agreement and shall include the Management Contract.

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

"**Operations and Maintenance Standards**" means the minimum standards of operations and maintenance set out in the annexure to APPENDIX 4 with regards the Project Facilities and Services.

"**Other Events**" means the Force Majeure Events set out in Article 14.4

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

"**Performance Standards**" means the minimum standards of performance set out

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in APPENDIX 15 with regards the Project Facilities and Services

"Performance Guarantee" shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessioning Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

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

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in, APPENDIX 2 belonging to the Concessioning Authority

"Port Limits" means the boundary of Kamarajar Port as notified by the Official Gazette from time to time.

"Project" means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement.

"Project Capacity" means the capacity of the Project Facilities and Services to handle 1.40 million **TEUs** of containers per annum.

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

"Project Facilities and Services" means the facilities and services as set out under the Project Requirements, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

"Project Requirements" means the minimum requirements as to the construction,

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operation and maintenance of the Project and provision of Project Facilities and Services set out in APPENDIX 4

"**Project Schedule**" means the schedule for the development of the Project as set out in the appendix 5 hereto.

"**Project Site**" means the area demarcated in APPENDIX 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

"**Provisional Certificate**" shall have the meaning assigned to it under Article 6.7.(d).

"**Punch List**" shall have the meaning assigned to it under Article 6.7 (d).

"**Quarter**" means a period of 3 (three) Months.

"**Remedial Period**" has the meaning ascribed to it in Article 15.4.

"**Request for Proposal**" or "**RFP**" means the Request for Proposal dated 30th October 2013 (as amended on 24th January 2014) issued by the Concessioning Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

"**Request for Qualification**" or "**RFQ**" means the Request for Qualification dated 24th May 2013 issued by the Concessioning Authority inviting applications in accordance therewith for shortlisting the competent applicants that can subsequently bid for the Project, and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

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

"**Royalty**" means the revenue share payable by the Concessionaire to the Concessioning Authority, pursuant to Article 9.2 hereof.

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"**Safety Standards**" means the minimum standards of safety set out in the annexure to APPENDIX 4 with regards the Project/Project Facilities and Services.

"**Scale of Rates**" means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by the Company (Concessioning Authority) or such other competent authority, as applicable

"**Scheduled Project Completion Date**" means as in Appendix 5 hereto.

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

"**Special Audit**" shall have the meaning assigned to it under Article 9.4.

"**Statutory Auditors**" means a firm of chartered accountants appointed in terms of Section 224 of the Companies Act, 1956 and acting as the statutory auditors of the Concessionaire.

"**Substitution Agreement**" means the agreement substantially in the form set out at APPENDIX 3, to be entered into between the Concessioning Authority, the Concessionaire and the Lenders.

"**Supporting Project Infrastructure**" means

a) maritime access channels;

b) port entrance;

c) protective works including breakwaters, shore protection;

d) access to port for inland transport (including roads, bridges and tunnels);

e) rail connections between hinterland and port;

and shall include such other facilities as may be specified by the Concessioning Authority as supporting infrastructure providedto be provided for the Project.

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"**SBI PLR**" means the prime lending rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

"**Tariff**" means the applicable rate(s) as per Scale of Rates that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"**Tariff Notification**" means the notifications in appendix 12 hereto setting out inter alia the Tariff and shall include any revisions thereof

"**Termination Notice**" means the termination notice issued pursuant to Article 16.1 hereof.

"**Termination Period**" shall have the meaning as set out under Article 16.1 hereof

"**Tests**" shall have the meaning assigned to it under Article 6.7(a) hereof

"**The Port**" means Kamarajar Port Limited

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

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

"**Transaction Documents**" means collectively the Project Contracts and the Financing Documents.

1.2 **Other References**

In this Agreement:

"**BIS**" means Bureau of Indian Standards.

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"**BS**" means British Standard.

"**CISF**" means Central Industrial Security Force.

"**DIN**" means German Industrial Standard.

"**FEM**" means Federation of Equipment Manufacturers

"**IS**" means Indian Standard.

"**ISO**" means International Standards Organization.

"**IEC**" means International Electro Technical Commission.

"**IMDG**" means International Maritime Dangerous Goods.

"**IMO**" means International Maritime Organization.

"**km**" means Kilometre, the unit of length.

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

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

"**m**" means Metre, the unit of length.

"**mm**" means Millimetre, the unit of length.

"**MT**" means Metric Tonne, the Unit of weight.

"**MTEU**" means Million TEU.

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

"**MSIHC**" means Manufacture Storage and Input of Hazardous Chemicals.

"**OISD**" means Oil Industry Safety Directorate

"**TEU**" means Twenty Equivalent Unit.

"**VAT**" means Value Added Tax.

1.3 Interpretations

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

In this Agreement unless the context otherwise requires:

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

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

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(c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(d) the words "include" and "including" are to be construed without limitation;

(e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) any reference to day shall mean a reference to a calendar day;

(h) any reference to month shall mean a reference to a calendar month;

(i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

(l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

(m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

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

1.4 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 3 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.5 Ambiguities and Discrepancies

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

(a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

(b) between the dimension scaled from the Design and Drawings and any specific written dimension, the latter shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail; and

(d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

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ARTICLE 2
CONCESSION AND PORT ASSETS

2.1 **Concession**

In consideration of the Concessionaire agreeing to pay to the Concessioning Authority (a) the License Fee and (b) Royalty, and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project/ Project Facilities and Services.

2.2 **Concession Period**

The Concession hereby granted is for a period of 30 years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services in accordance with the provisions hereof.

Provided that: -

(a) in the event of the Concession being extended by the Concessioning Authority beyond the said period of 30 years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

(b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.

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2.3 Acceptance of the Concession

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

2.4 Port's Assets

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

(b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Port's Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits

2.5 Use of Port's Assets

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

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2.6 **Information about Project Site and Port's Assets**

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioning Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

2.7 **Acceptance of the Port Assets**

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

(a) inspected the Project Site/Port's Assets, including the berths and all structures thereat and its surroundings;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

(c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

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2.8 Peaceful Occupation

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

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ARTICLE 3
CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the "**Conditions Precedent**"):

(a) The following Conditions Precedent shall be satisfied by the Concessionaire:

(i) Furnishing of the Performance Guarantee as stipulated in Article 9.1 hereof;

(ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

(iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

(iv) Opening the Escrow Account and executing the Escrow Agreement;

(v) Furnishing a copy of the Management Contract- not applicable;

(vi) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

(vii) Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessioning Authority under Article 3.1(b) hereunder;

(viii) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:

(a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;

(b) it/they has/have the financial standing and resources to fund/raise finances for undertaking and implementing the Project in accordance with this Agreement;

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(c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

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

(x) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in appendix 8 .

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

(i) procurement of the clearances required for the Project, as set out in appendix 8;

(ii) handing over physical possession of the Project Site ;

3.2 The aforesaid Conditions Precedent shall be complied with within 90 (Ninety) Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Article 3.1 (a) may be waived fully or partially by the Concessioning Authority at any time in its sole discretion or the Concessioning Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessionning Authority. Any of the Conditions Precedent set forth in Article 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion

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3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1 (a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioning Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1 (b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below.

3.5 If the Concessioning Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below:

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of

failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

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ARTICLE 4
PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioning Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioning Authority encashable and enforceable at Chennai substantially in the form set forth in APPENDIX 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of **Rs.63.50 crore** (Rupees sixty three crore and fifty lakhs only). Till such time the Concessionaire provides to Concessioning Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioning Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of **Rs.63.50 crore** (Rupees sixty three crore and fifty lakhs only) is available in immediate cash to the Concessioning Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations of Phase II. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioning Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

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ARTICLE 5
INDEPENDENT ENGINEER

5.1 Independent Engineer

(a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in APPENDIX 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

(b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations of Phase -II. The scope of work of the Independent Engineer shall be substantially as set out in APPENDIX 7.

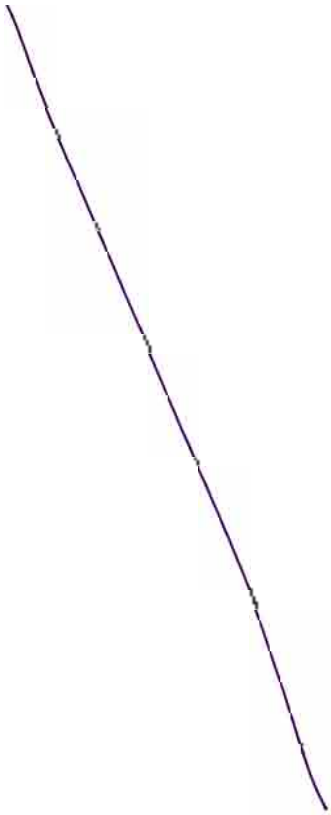
(c) The costs and expenses of the Independent Engineer shall be borne by the Concessioning Authority and Concessionaire, equally.

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(d) If the Concessioning Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessioning 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 clause (a) above

(e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in ARTICLE 19.







ARTICLE 6
PROJECT IMPLEMENTATION

6.1 **Preparation of Designs and Drawings**

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

6.2 **Review of the Designs and Drawings**

(a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.

(b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same (including taking into account the comments/observations of the Concessioning Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

(c) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.

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

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(e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioning Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

(h) Any review of the Designs and Drawings conducted by the Concessioning Authority is solely for the Concessioning Authority's own information and that by conducting such review, the Concessioning Authority does not accept any responsibility for the same.

(i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioning Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof

6.3 Construction Phase

6.3.1 The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement ("**Completion Certificate**") not later than 27 Months from the Date of Award of Concession for Phase I and not later than 72 Months from the Date of Award of Concession for Phase II works

6.3.2 The Project Facility and Services may, for the purpose of completion, be divided into 2(two) distinct phases, namely, Phase I comprising of development of terminal for 400 m quay length and installation of the equipment along with the Project Facility and Services as specified in Appendix 4 and Phase II comprising of development of terminal for 330 m quay length and installation of the equipment along with the Project Facility and Services as Specified in Appendix 4 , and the Provisional Certificate may, at the request of the Concessionaire, be issued separately for each of the 2(two) Phases. Upon issue of Provisional Certificate for any of the aforesaid Phases, such Phase shall enter into commercial service in accordance with the provisions of Article 6, whereupon the Royalty and additional License Fee if any comprising such phase shall become due and payable to the Concessionaire. For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary contained in this Clause 6.3.2, the obligations contained in Clause 6.2,6.3 and 6.9 shall continue to be binding on the Concessionaire. The Parties further agree that upon completion of any phase hereunder, the provisions of this Agreement shall apply as if the Project Facility and Services comprises of that phase and the rights and obligations of the Concessionaire in and in respect of that phase shall be construed accordingly.

6.4 Obligations of the Concessionaire

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

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

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

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

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

(e) Provide to the representative(s) of the Concessioning Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioning Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessioning Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioning Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

(f) provide monthly reports on the progress of Construction Works in such other relevant information as may be required by the Independent Engineer;

(g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and

(h) to ensure safe and timely construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

(i) Have no objection to the Concessioning Authority to handle or delegate/authorize the handling of cargo vessels carrying less than 40 containers per vessel call at other berths

6.5 Obligations of the Concessioning Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioning Authority shall:

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

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

(c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of the Company or such other provisions as applicable;

(d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and

(e) Subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

6.6 Suspension of Works

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

(b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioning Authority and thereupon represent to the Concessioning Authority / Independent Engineer,

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the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioning Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with ARTICLE 19 hereof.

6.7. **Issue of Completion Certificate**

(a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards ("**the Tests**"). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioning Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;

(b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results;

(c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioning Authority a Completion Certificate substantially in the form set forth in Appendix III;

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(d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**") to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of the Concessioning Authority for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioning Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioning Authority shall be entitled to terminate this Agreement;

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

6.8 Change of Scope

(a) The Concessioning Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated

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by this Agreement ("**Change of Scope**"). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% (five percent) of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Estimated Project Cost ;

(b) If the Concessioning Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated hereunder (the "**Change of Scope Notice**");

(c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioning Authority, the following:

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

(ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;

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

implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessioning Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioning Authority may issue an order to implement the Change of Scope;

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

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

(g) Notwithstanding anything to the contrary contained in this Article 16.8, the Concessioning Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek

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competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioning Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and

(h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioning Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioning Authority and all the provisions of this ARTICLE 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8(f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate

or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioning Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Estimated Project Cost, the Concessioning Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioning Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.







ARTICLE 7
OPERATIONS & MAINTENANCE

7.1 (a) **Obligations of the Concessionaire**

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) **Berth and Terminal Operations:**

The Concessionaire shall:

(a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;

(b) make efforts to maximize cargo handled so as to achieve optimal utilization of the Project Facilities and Services;

(c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;

(d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;

(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;

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(f) minimize disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;

(g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;

(h) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;

(i) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;

(j) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;

(k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide; and

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( ) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) **Repairs and Maintenance**

The Concessionaire shall at its own cost:

(a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipment; and

(b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted

(iii) **Replacement of Equipment**

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Project Requirements, at all times during the Concession Period.

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(iv) **Repairs, Replacement or Restoration**

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

(v) **Removal / Replacement of Assets**

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

(vi) **Payments to the Concessioning Authority**

The Concessionaire shall make/ensure payments to the Concessioning Authority as per ARTICLE 9.

(vii) **Access for Inspection**

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioning Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioning Authority provide the authorized representatives of the Concessioning Authority access to the Port's Assets/the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this

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Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioning Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

(viii) Reports

The Concessionaire shall provide to the Concessionning Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessionning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives

(ix) Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessionaire Authority may specify from time to time.

(x) Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site/Port Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioning Authority or a Government Authority from time to time. It shall also conform to

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and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

(xi) **Employment of Personnel**

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

Further, the Concessionaire shall comply with the requirements of employing the existing personnel/ labour as agreed to and set out in Appendix 11. All labour law compliances shall be that of the Concessionaire alone

(xii) **Minimum Guaranteed Cargo**

The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo handling of the levels set out in Appendix 14 ("Minimum Guaranteed Cargo") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

(xiii) **Indemnity Against Claims for Loss of Goods**

Notwithstanding anything contained in the provisions of the Company or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the

"**Action**") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioning Authority, its officers, employees, agents and representatives (the "**Indemnities**") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitees(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnities. Provided further that the Indemnities shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnities in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnities in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnities and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnities shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement. If any order is passed against the Indemnities (monetary or otherwise), it shall be the sole responsibility of the Concessionaire to satisfy/pay off to the complete satisfaction of the Concessioning Authority.

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(h) **Rights of Concessionaire**

(i) **Preferential and Priority Berthing**

The Concessionaire may offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities and Services. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the Parties in accordance with Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any.

(ii) **Unclaimed cargo**

The Concessionaire may at its cost:

(a) after obtaining prior written approval of the Commissioner of Customs or other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose of by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and other laws in this regard.

(b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessioning Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

(c) **Obligations of the Concessioning Authority**

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

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(i) **Marine and Port Services**

The Concessioning Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

(a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;

(b) maintenance of the entrance channel depth at (-)17 m CD;

(c) waterside safety and safety of navigation;

(d) maintenance of the dredged depth alongside the berth at (-)16 m CD;

(e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

(f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

(g) provide for/put in place arrangements for provision of Supporting Project Infrastructure other than those covered under the Concession;

(h) assist the Concessionaire in securing the assistance of CISF

or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and

(i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.

(ii) Approvals

The Concessioning Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard

7.2 **Utilities and Services**

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

(a) the power made available shall be as received by the Concessioning Authority from Tamil Nadu Electricity Board [TNEB]. The take off point for electricity shall be from the substation at Common substation located not more than 5 Kms from the south west corner of the proposed Container Terminal.

(b) the water made available shall be as received by the Concessioning Authority from Chennai Metropolitan Water and Sewerage Supply Board [CMWSSB]. The take off point for water shall be the nearest available water line;

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(c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioning Authority, install meters to measure the consumption of power and water. The Concessioning Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;

(d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

7.3 Liability for shortfall in performance

In the event the Concessioning Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioning Authority shall calculate the amount of Liquidated damages payable by the Concessionaire in accordance with APPENDIX 15 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioning Authority which shall be considered by the Concessioning Authority on merits and the Concessioning Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

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

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ARTICLE 8
TARIFF

8.1 Levy and Recovery of the Tariff

(a) The Concessionaire shall be entitled to recover Tariff from the users of the Project Facilities and Services as per the Tariff Notification, an extract of which is set out in Appendix 12. The Reference Tariffs shall be revised in the manner set out in Appendix 12 and duly notified from time to time by the Concessioning Authority or such other competent authority under the Applicable Laws. The Concessionaire would be free to fix a market linked Tariff (Notified Tariff) higher/lower than the Reference Tariff. The tariff applicable for determining the Royalty payable by the Concessionaire shall be the higher of the two Tariffs . As of the date hereof, the applicable Tariff guidelines are as set out in Appendix 12. The Concessionaire shall, subject to Article 8.2 hereunder, deposit all Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Concessionaire or of any other person.

(b) The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or any other relief from the Concessioning Authority or any Government Authority, except in accordance with the express provisions of Agreement, the Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff Notification issued by the Concessioning Authority and agrees that the Concessioning Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.

8.2 Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as may be requested by the Concessioning Authority, on behalf of the Concessioning Authority and remit the same to the Concessioning Authority. Provided, the Concessionaire shall be duly authorized by the Concessioning Authority or such other authority as may be competent in this regard, for the purpose of such collection.

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ARTICLE 9
PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of **Rs.2,88,35,000/- (Rupees. Two Crores eighty eight lakhs thirty five thousand only per annum)** worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (as specified in the bid documents) (the "**License Fee**"). Such amount shall be paid by the Concessionaire in half yearly installments in advance before 5th of the first month of the relevant half year from the date of award of concession.

(b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI PLR plus 2% (two percent) per annum on the amount outstanding.

9.2 Payments of Royalty

(a) The Concessionaire shall pay to the Concessioning Authority per month equivalent to 37.00 % **(Thirty seven percent)** of the Gross Revenue chargeable by the Concessionaire ("the **Royalty**").

(b) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferments, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue. Further, in computing the Gross Revenue, income from interest, sale of assets, amounts received by the Concessionaire by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and

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cesses in respect to the Project Facilities and Services, if any collected and paid to any Government Authority shall also be ignored

(c) Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.

(d) The payment of Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services or 27 months from the Date of Award of Concession, whichever is earlier, and shall be irrespective of Date of Commercial Operation.

(e) Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

9.3 Utilities or Services

The Concessionaire shall also pay rent or other charges for any premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be twice the Scale of Rates as may be notified by the competent authority in respect thereof from time to time (the present rates applicable in respect of land, utilities and services are set out in appendix I J).

9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, ship/vessel/user wise information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessioning Authority a financial statement of the Gross Revenue for every 6

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(six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioning Authority and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the Gross Revenue ("**Special Audit**").

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Royalty on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @ SBI PLR plus 2% (two percent) on the difference between the Royalty paid by the Concessionaire based on the Gross Revenue reported by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the Royalties as above. Further the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5 Escrow Account

The Concessionaire shall maintain an escrow account with a bank approved by the Lenders ("**Escrow Account**"), during the subsistence of this Agreement and enter into an agreement substantially in the format prescribed in APPENDIX 16 with such bank to ensure that all proceeds for financing the Project and all revenues and

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other receipts arising from the Project and under any agreements, including this Agreement received by the Concessionaire are deposited into such Escrow Account.Provided, the Concessionaire shall not deposit any amounts including the cesses and duties collected by it from the users on behalf of the Concessioning Authority or such other authority in accordance with Article 8.2 hereof or pursuant to any other instructions in respect thereof in the Escrow Account and shall deposit the same in a separate account dedicated for the same and maintained by it in trust for the Concessioning Authority or such other authority.

(a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority[1] :

(i) for all taxes due and payable by the Concessionaire;

(ii) towards payment of License Fee;

(iii) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

(iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

(v) towards its debt service obligations under the Financing Documents;

(vi) towards payment of Royalty and other sums payable to the Concessioning Authority and liquidated damages, if any,

[1] This provision would be discussed at the pre-bid stage and any reasonable requests of the bidders and the lenders would be taken into account with respect to the priority.

(viii) towards any reserve requirements in accordance with the Financing Documents,

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Concessionaire in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Concessioning Authority and the Lenders.

(b) All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with ARTICLE 17 shall be appropriated in the following order of priority:

(i) towards taxes and statutory dues payable by the Concessionaire;

(ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

(iii) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Lenders and the Concessioning Authority

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ARTICLE 10
ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

(a) Land and Water Area

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

(b) Assets created or provided by the Concessionaire

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

10.2 Permitted Charge on Assets

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Lenders for securing the

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

Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the Port's Assets

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

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ARTICLE II

SHAREHOLDING

II.1 Ownership Structure

The Applicant/Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire is as follows: M/s. Adani Ports and Special Economic Zone Limited 100%

II.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the Exclusivity Period as also maintain their equity holding in the Concessionaire such that.

(a) The Applicant/members of the Consortium legally and beneficially hold not less than 51% (fifty one percent) of its paid up equity capital until 3 (three) years after Date of Commercial Operations and not less than 26% (twenty six percent) of its paid up equity capital during the balance Concession Period: and

Notwithstanding the aforesaid, any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioning Authority which consent shall not be

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withheld except (i) for reasons of national security; or (ii) if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.

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

11.3 Constituent Documents

The Concessionaire shall ensure that its Articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

In particular, the Articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended Articles of association and the memorandum of association to the Concessioning Authority as soon as may be reasonably possible.

Any subsequent change in the Articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessioning Authority and the Articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

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ARTICLE 12
GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 **Of the Concessionaire**

(a) **Applicable Permits**

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

(b) **Taxes & duties**

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

(c) **Insurance**

(i) **Insurance Requirement**

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

(a) builder's all risk insurance;

(b) loss, damage or destruction of the Project Facilities and Services, at replacement value;

(c) comprehensive third party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;

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(d) workmen's compensation insurance;

(e) marine cum storage cum erection insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("**Insurance Cover**").

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioning Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Lenders as the loss payees under the insurance

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policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) **Validity of the Insurance Cover**

The Concessionaire shall pay the premium payable on such insurance policy(es) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioning Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessionning Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ SBI PLR plus 2% (two percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning Authority by exercising right of set off or otherwise.

(vi) **Waiver of Subrogation**

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, interalia, the Concessioning Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or

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counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(d) **Indemnification**

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

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(e) **Assignability**

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

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

(i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and

(ii) authorize or be deemed to authorize the Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

(f) **Engagement of Contractors**

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

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil/mechanical/electrical engineering structures/equipment.

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and/or operation and maintenance of the Project Facilities and Services.

Provided:

(i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

(ii) the Concessionaire should have obtained requisite security clearance for the Contractor the Concessionaire intends to engage;

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

(iv) any contract that it enters with an Affiliate in respect of the Project shall be on an arms-length basis.

(g) **Condition Survey**

(i) The Concessionaire agrees that at least 12 (twelve) Months prior to the expiry by efflux of time of the Concession Period, it shall cause to be conducted at its cost by an Expert appointed by the Parties by

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

(ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioning Authority a guarantee issued by a scheduled bank in India for a sum of **Rs. 63.50 crore (Rupees sixty three crore and fifty lakhs only)** at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioning Authority shall accordingly be entitled to terminate this Agreement in accordance with ARTICLE 15

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12.2 **Of the Concessioning Authority**

(a) **Assistance in obtaining Approvals, Permits and Licenses**

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

(b) **Taxes and Duties**

Any levy or levies including increase therein of taxes, duties, cess and the like, on account of/in respect of Port's Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioning Authority.

(c) **Competing Facilities**

The Concessioning Authority shall not operationalise any additional facility within Port Limits for handling containers either on its own or through any other Person until the earlier of (i) 7(Seven) years from the Date of Award of Concession;or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of Project Capacity for 2 (two) consecutive years ("Exclusivity Period") provided this restriction shall not apply to the additional facilities envisaged at the Port for development of CFS / Buffer Yard and Rail Yard for containers.

(d) **General rights of inspection and verification**

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

12.3 **Of the Concessioning Authority and the Concessionaire**

(a) **Compliance with Laws and Regulations**

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

(b) **Rights to Documents**

(i) **Concessioning Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioning Authority, be returned by the Concessionaire to the Concessioning Authority on the Transfer Date.

(ii) **Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project (the Project Facilities and Services shall be handed over by the Concessionaire to the Concessioning Authority free of cost on the Transfer Date.

(iii) **Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the

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other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

(iv) **Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement

(v) **Substitution Agreement**

The Substitution Agreement envisaged by APPENDIX 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioning Authority of the Lenders' readiness to execute the same.

ARTICLE 13
CHANGE IN LAW

13.1 Change in Law

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

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

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

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

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iv) any rules or regulations stipulated by any regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

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13.2 **The Concessionaire's Remedy**

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

(b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of **Rs.88.90 crore** may at the option of the Concessioning Authority be borne by the Concessioning Authority. It is clarified that Additional Cost upto **Rs.88.90 crore (Rupees Eighty eight crore and ninty lakhs only)** in any accounting year shall be borne by the Concessionaire;

(c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioning Authority, of the following:

(i) the particulars, nature and the impact of Change in Law on the Project;

(ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and

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(iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

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

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

(i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;

(ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI PLR + 2% (two percent) on the amount the payment of which is deferred.

Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2.

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If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds **Rs.6.35 crore (Rupees six crore and thirty five lakhs only)** in any Financial Year, the Concessionaire shall notify the Concessioning Authority and pay to the Concessioning Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessioning Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit.

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

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ARTICLE 14
FORCE MAJEURE

14.1 Force Majeure Event

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

(a) is beyond the control of the Party claiming to be affected thereby (the "**Affected Party**");

(b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and

(c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

14.2 Non-Political Events

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth

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in 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

(c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;

(d) the discovery of geological conditions, toxic contamination or archeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

(a) Change in Law for which no relief is provided under the provisions of ARTICLE 13, resulting in Material Adverse Effect;

(b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;

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

(d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

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14.4 Other Events

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

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

(b) industry wide or State wide strikes or industrial action;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;

(d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(e) any event or circumstance of a nature analogous to any of the foregoing

14.5 Notice of Force Majeure Event

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

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the performance of its obligations under this Agreement

(b) The Notice shall inter-a ia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

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

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

(b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

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

14.8 Performance Excused

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

14.9 Costs, Revised Timetable

(a) Costs

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

(b) Extension of time/period

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

14.10 Termination Due to Force Majeure Event

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

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ARTICLE 15
EVENTS OF DEFAULT

15.1 Events of Default

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

(a) The Concessionaire Event of Default

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

(i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;

(ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;

(iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;

(iv) Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;

(v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

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(vi) A default under the Management Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

(vii) the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved,

(viii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

(ix) the Concessionaire passing a resolution for voluntary winding up;

(x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

(xi) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

(xii) levy of an execution or destraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days,

(xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;

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(xiv) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement.

(xv) a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of ARTICLE 11 hereof;

(xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of ARTICLE 11 hereof; and

(xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) **The Concessioning Authority Event of Default**

(i) the Concessioning Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure was occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.

(ii) any representation made or warranties given by the Concessionning Authority under this Agreement is found to be false or misleading

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(iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

(iv) levy of an execution or destraint on the Port's Assets in any proceedings against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days

15.2 Parties Rights

(a) Upon the occurrence of the Concessionaire Event of Default, the Concessioning Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(b) Upon the occurrence of the Concessioning Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

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

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s)

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and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**")

15.4 Remedial Process

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

(a) the change of management or control/ownership of the Concessionaire;

(b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:

(i) the criteria for selection of the Selectee;

(ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

(iii) handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;

(iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;

(v) acceptance by the Selectee of any amounts due to the Concessioning

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Authority from the Concessionaire under this Agreement; and

(vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

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

15.6 Revocation of Consultation Notice

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

15.7 Termination due to Events of Default

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

15.8 Concessioning Authority's Rights of Step-in

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

(a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;

(b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;

(c) step in and succeed upon election by Concessioning Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

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

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ARTICLE 16
TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

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

16.2 Obligations during Termination Period

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

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the Concessioning Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioning Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely compensation payable by the

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Concessioning Authority to the Concessionaire and/or to finalize the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioning Authority.

(a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;

(b) data or records [to be specified by Concessioning Authority] regarding the operation and maintenance of the Project Facilities and Services;

(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

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

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

16.4 Condition Survey

(a) The Concessionaire agrees that on the service of a Termination Notice or at least 12 (Twelve) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioning Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioning Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the

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Concessioning Authority on the Transfer Date.

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

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

16.5 Consequences of Termination

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

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

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

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

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ARTICLE 17
COMPENSATION

17.1 Compensation

(a) **Termination due to Force Majeure Event**

(i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to Other Event, compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioning Authority Event of Default under Article 17.1(c).

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

(b) **Termination due to Concessionaire Event of Default**

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

(i) the Book Value;

(ii) 90% (ninety percent) of Debt Due;

(iii) the Actual Project Cost;

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

(c) Termination due to Concessioning Authority Event of Default

If the termination is due to a Concessioning Authority Event of Default, the compensation payable by the Concessioning Authority shall be equal to the aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

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

17.3 Transfer Fee and Charges

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

(a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;

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(b) the Concessioning Authority in the event of termination due to an Concessioning Authority Event of Default or Political Event; and

(c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event

17.4 Payment of Compensation to Lenders

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

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

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

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioning Authority fails to pay the compensation on the Transfer Date, the Concessioning Authority shall be liable to pay interest @ SBI PLR plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioning Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with ARTICLE 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioning Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioning Authority the Gross Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioning Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioning Authority in accordance with the requirements hereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioning Authority is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning Authority. Provided however, the Concessionaire shall be liable to pay Royalty in accordance with Article 9.2.

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17.7 **Remedies Cumulative**

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

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ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

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

18.2 Concessionaire's Obligations

The Concessionaire shall,

(a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;

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

(c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;

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

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

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

18.3 Concessioning Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioning Authority shall pay compensation payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Lenders, or deposit the same in the Escrow Account or on the written instructions of the Lenders to any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the Concessioning Authority shall stand duly discharged of its obligations regarding payment of

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compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of the assets shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge.

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

18.4 Risk

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

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ARTICLE 19
DISPUTE RESOLUTION

19.1 Amicable Settlement

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

19.2 Assistance of Expert

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

19.3 Arbitration

(a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the

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Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.

(b) **Place of Arbitration**

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

(c) **English Language**

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

(d) **Procedure**

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

(e) **Enforcement of Award**

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

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wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) **Fees and Expenses**

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

(g) **Performance during Arbitration**

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

ARTICLE 20
REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

(a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;

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

(f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant,

contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

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

(k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioning Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement or material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

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(l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioning Authority in connection therewith;

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

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

20.2 **Representations and Warranties of the Concessioning Authority**

The Concessioning Authority represents and warrants to the Concessionaire that:

(a) it is duly organized, validly existing and in good standing under the laws of India,

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement.

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessioning Authority, enforceable against it in accordance with the terms hereof; and

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

20.3 **Disclosure**

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

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ARTICLE 21
MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is 0.60 m below mean sea level.

21.2 Survival of Obligations

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

21.3 Articles to survive Termination

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

21.4 Joint Responsibility

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

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21.5 **Several Obligations**

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

21.6 **Severability**

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

21.7 **Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

THE CONCESSIONING AUTHORITY:

CHAIRMAN CUM MANAGING DIRECTOR
KAMARAJAR PORT LIMITED
23, RAJAJI SALAI, 1ST FLOOR
CHENNAI 600 001
Fax No: 044- 25251665

Kamarajar Port Limited Chennai

THE CONCESSIONAIRE:

THE DIRECTOR

ADANI ENNORE CONTAINER TERMINAL PRIVATE LIMITED

ADANI HOUSE, NEAR MITHAKALI CIRCLE,

NAVRANGPURA, AHMEDABAD – 380 009,

GUJARAT

FAX NO. 079- 2656 5500

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

21.8 **Waiver**

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement

21.9 **Amendments, Modifications or Alterations.**

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

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21.10 **Governing Law**

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

21.11 **Entire Agreement**

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

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

Common Seal of the Concessioning Authority is affixed pursuant to its resolution dated 14th February 2014 of the Board in the presence of Mr. **M.A.Bhaskaranchar** who has signed this Agreement in token thereof.

Signed and Delivered by the Concessionaire by the hand of its authorized representative **Mr. Rajeeva Sinha** pursuant to Resolution dated 26th February 2014 of its Board of Directors.

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APPENDIX I

PROJECT SITE

1. PHYSICAL CONDITIONS

The container terminal Proposed is on the western side of the harbour basin with a continuous berthing face in a north-south orientation. The terminal will commence from a distance of about 610 m from the northern edge of the Iron-ore berth. The proposed Container Terminal is located inside the Port boundary and same as shown in the drawing (enclosed as Annexure-I)

2. SITE CONDITIONS

The Concessioning Authority shall provide land of 730m long and 500m wide in as-is where-is condition on pro-rata basis for Phase-I and Phase-II development from the face of the berth for development of Container berth, Container Stacking yard, service road, gate complex and other associated utility buildings.

The proposed alignment of Container Berth falls shoreward beyond the existing waterline. This means that the construction of the Berth structure has to be executed on land.

3. ROAD INFRASTRUCTURE

The Concessioning Authority shall provide a road access upto the boundary limits of the Container Terminal on or before the date of Commercial Operations.
The Concessionaire is permitted to construct, operate and maintain road infrastructure within the boundary limits of the terminal.

4. SECURITY ARRANGEMENTS

CISF looks after general security of the port and manning the gates. The Concessionaire shall abide by the security regulations / procedure as stipulated by the Concessioning Authority from time to time. The Concessionaire shall provide its own security arrangements for his assets.

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5. PORT ENTRY

Entry into Port is based on prior permission. The Concessionaire has to obtain entry passes for the entire work force, tools, vehicles, equipments etc deployed for construction and operation of the Terminal. The entry passes for work force and vehicle will be issued on payment of processing fee.





APPENDIX 2

PORT'S ASSETS

1. LAND

The Concessioning Authority shall provide land of 730m long and 500m wide in as-is where-is condition on pro-rata basis for Phase-I and Phase-II development from the face of the berth for the development of container berth, Stacking yard, service road, gate complex and other associated utility buildings.

2. DREDGING

The Concessioning Authority shall provide the following depths 23 months from the Date of Award of Concession for Phase-I and 68 months for Phase-II.

- -16 m CD at the water front alongside berth.
- -16.5m CD at the basin and
- -17m CD at the approach and entrance channel

The Concessioning Authority may consider if commercially viable for further deepening of the channel basin and alongside of the berth areas, if necessary guarantee is provided by the Concessionaire for use of additional draft, but is not obligated to do so.

3. SUPPLY OF POWER & WATER

As per clause 7.2, the concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. The Concessionaire shall be liable for all payments to the concern authority for power, water and other utilities required for the project during construction and operation phase. Based on the availability of Water and Power, on request the Concessioning Authority would provide during construction stage of the Terminal.

4. LIGHTING

The Concessioning Authority will undertake general lighting of the port. The lighting within the premises of terminal would be responsibility of the Concessionaire.

5. SEWERAGE SYSTEM

At present no sewerage system available at port. The Concessionaire shall make own arrangements for the same.

6. BUNKERING

The bunkering will be arranged by Concessioning Authority subject to availability subject . The Concessionaire or Shipping lines can avail this facility

7. OTHER SUPPORT FACILITIES

Any other facilities required for the development and operation of the terminal will have to be arranged by the Concessionaire.

APPENDIX 3

SUBSTITUTION AGREEMENT

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

AMONGST.

THE KAMARAJAR PORT LIMITED, company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 4th Floor, 23, Rajaji Salai, Chennai 600 001 (hereinafter referred to as "**the Concessioning Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s ADANI ENNORE CONTAINER TERMINAL PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Adani House, Near Mithakali Circle, Navrangpura , Ahmedabad – 380 009, Gujarat hereinafter referred to as "**the Concessionaire**" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ---------- ---------- hereinafter referred to as "**the Lender**"

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at---------- ---------- acting for and on behalf of the Lenders listed in Schedule A hereto (hereinafter referred as "**the Lender's Representative**".

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WHEREAS,

a) The Concessioning Authority for implementing a Project envisaging **Development of Container Terminal at Kamarajar Port** by private sector participation (hereinafter referred to as "**the Project**"), has by the Concession Agreement dated **15th March 2014** entered into between the Concessioning Authority and the Concessionaire (hereinafter referred to as "**the Concession Agreement**") has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;

b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"**Financial Assistance**" means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

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

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"**Lender(s)**" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to the Concessionaire, from time to time.

"**Residual Concession Period**" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

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

"**Suspension Period**" means the Termination Period as defined in Article 16 of the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Agreement are completed and the substitution has become effective.

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

ARTICLE 2

ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign its rights, title and interest in the Concession to, and in favour of, the Lenders pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in

respect of financing by the Lenders under the Financing Documents.

ARTICLE 3

SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

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

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

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3.2.3 At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioning Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioning Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessioning Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessioning Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of Concessionaire Default

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

3.3.2 In the event that the Lenders/Lenders' Representative makes a representation to the Concessioning Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Lenders/Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessioning Authority shall either withhold termination and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the

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Lenders/Lenders' Representative and the Concessionaire, the Concessioning Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.4 Procedure for substitution

3.4.1 The Concessioning Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioning Authority under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement.

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

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

(a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and

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

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

3.5 Selection to be binding

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

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ARTICLE 4

TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 5

TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

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

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessioning Authority is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessioning Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

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Realization of Debt Due

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

ARTICLE 6

DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

ARTICLE 7

INDEMNITY

7.1 General indemnity

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

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

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

7.2 **Notice and contest of claims**

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

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ARTICLE 8

GENERAL

8.1 General

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

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

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

(iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Lender or Concessioning Authority shall have the benefit of this Agreement

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

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

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

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

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

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

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

(xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this

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Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

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





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

SIGNED AND DELIVERED ON BEHALF OF

---------- ----------LIMITED

BY : _____ _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

KAMARAJAR PORT LIMITED

BY : _____ _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

---------- ON BEHALF OF THE

LENDERS SETFORTH IN SCHEDULE I

BY : ___ _

Name :

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APPENDIX - 4

PROJECT REQUIREMENTS

1. BERTH STRUCTURE & STACKING YARD

(a) On the Date of Commercial Operation of Phase I, berth length of 400 meters, and Container Stacking yard shall be provided

(b) On the Date of Commercial Operation of Phase-II, berth length of 330 meters and container Stacking yard shall be provided.

2. EQUIPMENT

(a) In accordance with the performance standards set out in APPENDIX 15, **on the Date of Commercial Operation of Phase-I,** the terminal shall be equipped with the following minimum main equipment **to handle a capacity of 0.80 million TEUs of Containers.**

- Rail Mounded Quay Cranes of outreach of the 42m/53m 4 Nos.
- Rubber tyre Gantry Cranes 12 Nos.
- Reach Stacker 1 No
- Tractor Trailers 24 Nos.

(b) In accordance with the performance standards set out in APPENDIX 15, **on the Date of Commercial Operation** of Phase II, the terminal shall be equipped with the following minimum main equipment **to handle additional capacity of 0.60 million TEUs of Containers.**

- Rail Mounted Quay Cranes of outreach of the 42m/53m 3 Nos.
- Rubber tyre Gantry Cranes 9 Nos.
- Reach Stacker 1 No.
- Tractor Trailers 18 Nos

3. OTHERS

The indicative and minimum standards and norms for various kinds of project such as construction standards, operation and maintenance standards and safety standards are prescribed in the Annexure below:

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CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

A. General

The Concessionaire shall execute the project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OHSD standards, etc shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

B. Civil Construction Work

B 1. Container Terminals

The civil construction work may comprise variety of works such as construction of berths, development of back up area for storage of containers, approach roads, operational buildings/offices, maintenance workshop, drainage, water supply,

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environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by him meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following paragraphs.

Indian Standards for Construction of Ports and Harbours

IS 4651 – Part I – 1974	Code of practice for planning and design of ports and harbours: Part I Site investigation
IS 4651–Part 2–1989	Code of practice for planning and design of ports and harbours Part 2 Earth pressure
IS 4651-Part III-1974	Code of practice for planning and design of ports and harbours: Part III. Loading
IS 4651 - Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part V-1980	Code of practice for planning and design of ports and harbours Part: V Layout and functional requirements
IS 7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and harbour structures: Part 1 Concrete monoliths
IS 9527: Part III : 1983	Code of practice for design and construction of port and harbour structure: Part III Sheet pile walls
IS 9527: Part 4: 1980	Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures
IS 9527 Part V 1989	Code of practice for design and construction of port and harbour structure: Part V Open pile structures

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IS 9527: Part 6: 1989	Code of practice for design and construction of port and harbour structures: Part 6 Block work
IS 10020: Part 4: 1981	Recommendations for design and construction of port and harbour components Part 4 Slipways.
IS 9556: 1980	Code of Practice for design and construction of diaphragm walls

Indian Standards for Foundation Work

IS 2911, Part 1:Sec 1:1979	Code of practice for design and construction of pile foundations Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles
IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911 Part 1:Sec 3:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre cast concrete piles
IS 2911: Part1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations – Part 1: Design
IS 2974: Part 1: 1982	Code of practice for design and construction of Machine Foundations- Part 1: Foundation for Reciprocating Type Machines.

IS 2974: Part 2: 1980	Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)
IS 2974: Para 3: 1992	Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)
IS 2974:: 1979:	Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary type machines of low frequency.
IS 2974 Part 5. 1987	Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drop crusher and jolter)
IS 1080: 1985	Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).
IS 13094: 1992	Guidelines for Selection of ground improvement techniques for foundation in weak soils.

Indian Standards for Structural Design

IS 875(Part I to V): 1987	Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.
IS 456: 2000	Code of Practice for plain and reinforced concrete.
IS: 800: 1984	Code of practice for general construction in steel
IS: 801: 1975	Code of practice for use of cold formed light gauge steel structural members in general building construction.
IS: 803: 1976	Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.
IS 1893: Part 1. 2002	Criteria for Earthquake Resistant Design of Structures Part 1 – General Provision and Buildings
IS 1893: Part 4. 2005	Criteria for earth quake resistant design of structures – Part 4- Industrial Structures including Stack-like Structures.

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IS 4326: 1993	Code of Practice for Earth Quake Resistant design and construction of buildings.

C. Cargo Handling Equipment

C-1 General

The concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers. The equipment shall generally conform to the following standards and code of practices.

C-2 Electric Cranes - Wharf and Gantry Cranes

The crane and its mechanisms shall be designed and constructed in compliance with the latest editions and amendments of the following standards and codes of practice. Standards equivalent or higher in BS, JIS, FEM, DIN, ISO, IEC are also acceptable.

Structures and Mechanism

IS 807: 2006	Design, erection and testing (Structural Portion) of Cranes and Hoists Code of Practice. BS 5400 – Part 10 Steel concrete and composite bridges
IS 4137 1985	Specification for heavy duty electric overhead traveling and special cranes for use in steel works

Material

IS 800: 1984	Code of Practice for general construction in steel
IS 2062: 2006	Hot rolled low medium and high tensile Structural Steel
IS 2644: 1994	High tensile steel castings
IS 2266: 2002	Steel Wire Ropes for General Engineering Purposes-specification

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IS 3177: 1999	Code of Practice for Electric Overhead Traveling Cranes and Gantry Cranes other than Steel Work Cranes

Electricals

IEC standards

IEE regulations for the electrical equipment of buildings

BS 4999 / FEM 3rd edition Booklet 4 - Motors

BS 171, BS 3941, BS 3938 - Transformers

BS 99 - Fuses

Welding

IS 7307: Part 1: 1974	Approval test for welding procedures Part 1 Fusion welding of steel.
IS 7318: Part 1: 1974	Approval test for Welders working to approved welding procedures – Part 1: Fusion welding of Steel.

Painting

BS 5493	Code of practice for protective coating of iron and steel structures against corrosion

Swedish Standard Sa 2,5 or SIS ST3, SIS 055900 surface preparation

General

IS 13367:Part : 1992 Safe use of Cranes - Code of Practice Part 1 General

Classification of Crane Structures

Class of utilization:	U8 (4 Million loading cycles)
State of loading:	Q3
Group classification:	A8
Impact factor:	1.4
Duty factor:	0.9
Nominal load spectrum:	0.8 of rated capacity factor

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Mechanism

Class of Utilization State of Loading Group Classification

Hoist	T8	L3	M8
Traverse	T8	L3	M8
Travel	T5	L2	M5
Boom hoist	T3	L3	M4

The wharf cranes shall be designed for Stability as per BS 2573 Part I & II.

C-2 Mobile Equipment

IS 4357: 2004	Methods for Stability Testing of Fork Lift Trucks
IS 4573: 1982	Specification for Power Driven Mobile Cranes
IS 13473: Part 2:1992/	Cranes Vocabulary Part 2 Mobile cranes ISO 4306-1985
IS 13558: Part 2 1995/	Cranes - Controls - Layout and Characteristics – Part ISO 7752 –2- 1986 Mobile Cranes. 1985
IS 13834 : Part 2: 1993/	Cranes - Classification: Part 2 Mobile cranes ISO 4301 – 2
IS 13870: Part 2: 1993/	Cranes and Lifting Appliances - Selection of Wire ISO 4308 : 1988 Ropes - Part 2: Mobile Cranes Coefficient of utilization
IS 14469: 1997/	Mobile Cranes - Determination of Stability ISO 4305 - 199/
IS 14474: Part 1: 1997/	Mobile Cranes - Experimental Determination of Crane ISO 11662-1 :1995 Performance – Part 1 : Tipping Loads and Radii
IS 3173: 1965	Specification for High pressure connections for fuel injection equipment for diesel engines

D. Electrical

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IS 325: 1996	Three phase induction motors
IS 900: 1992	Code of practice for installation and maintenance of induction motors
IS 1231: 1974	Dimensions of Three phase Foot mounted Induction Motors
IS 2223: 1983	Dimensions of flange mounted ac induction motors
IS 3682: 1966	Flame proof ac motors for use in mines
IS 3842: Part 2 : 1966	Application guide for electrical relays for ac systems: Part 2 Over current relays for generators and motors
IS 4029: 1967	Guide for testing three phase induction motors
IS 8151: 1976	Single speed three-phase induction motors for driving lifts
IS 8789: 1996	Values of performance characteristics for three phase induction motors
IS 9628: 1980	Three phase induction motors with type of protection 'n'
IS 10042: Part 3 : Sec 1:1983	Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors
IS 12615: 2004	Energy Efficient Induction Motors - Three Phase Squirrel Cage
IS 13529: 1992	Guide on Effects of Unbalanced Voltages on the Performance of Three Phase Cage Induction Motors
IS 13555: 1993	Guide for Selection and Application of 3-Phase A. C. Induction Motors for Different Types of Driven Equipment
IS 14122: 1994	Built in thermal protection for electric motors rated up to 660 V ac
IS 14377: 1996	Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation
IS 6429: 2014	Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987	Code of practice for earthing
IS 3151: 1982	Earthing transformers
IS 5553(Part 6) 1991	Reactor Parts Earthing of Transformers
IS 9921: Part 1: 1981	Specification for Alternating Current Disconnectors

	(Isolators) and Earthing Switches for Voltages above 1 000 V -Part I: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 982	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction
IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing – Specification
IS 14981: 2001	Live Working - Earthing or Earthing and Short-Circuiting Equipment Using Lances as a Short-Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories -Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732	IS 732: 1989 Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1 for working voltages upto and including 1100 V

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IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working voltages from 3.3 kV upto and including 11 kV
IS 7098 (Part 1) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages upto and including 1100 V
IS 7098 (Part 2) : 1985	Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV upto and including 33 kV
IS 7098 (Part 3) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV upto and including 220 kV
IS 10118 (Part 1) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 1 General
IS 10118 (Part 2) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears. Part 2 Selection
IS 10118 (Part 3) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 Installation
IS 10118 (Part 4) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

E. **Operations & Maintenance Standards:**

Repairs, Maintenance and Replacement

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

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR.

While carrying out the repairing, maintaining and replacing the project facilities,

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the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, project facilities in trust for eventual transfer to the Concessioning Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Port Assets and Project Facilities and Services is diminished.

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

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

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

E.1 Maintenance Standards

ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

E.2 Painting

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IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147 : 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419 : 1989	Antifouling paint, brushing for ship's bottom and hulls-Specification (second revision)
IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck Specification (first revision)
IS 6948 : 1975	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships
IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

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F. **Safety Standards**

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

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 alongwith The Explosive Substance Act, 1983 & The Explosive Rules, 1983
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
11. MARPOL CONVENTION
12. International Maritime Dangerous Goods Code

BESIDES THE ABOVE, ADDITIONAL CODES AND STANDARDS SHALL BE REFERRED TO IF REQUIRED.

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APPENDIX 5

PROJECT SCHEDULE

Milestone Date	Activity/Level of Completion of project
Phase-I development : 10 months from Date of Award of Concession	25% of Civil work of Phase I should have been completed. Civil works means construction of Berth, Stacking yard, all other buildings required for the Terminal in Phase - I.
15 months from Date of Award of Concession	40% of Civil work of Phase I should have been completed and erection of equipment specified in APPENDIX 4 shall be commenced.
27 months from Date of Award of Concession	100% of Civil work of Phase I should have been completed and erection of equipment specified in APPENDIX-4 shall be completed.
Commercial Operation Period of Phase-I	From 27th month of Date of Award of Concession.
Phase-II development : 51 months from Date of Award of Concession (Maximum)	Phase II Construction of civil works should have been started. Civil works means construction of Berth, Stacking yard, all other buildings required for the Terminal in Phase - II.
63 months from Date of Award of Concession	50 % of Civil work of Phase II should have been completed
72 months from Date of Award of Concession	100% of Civil work of Phase II should have been completed and erection of equipment specified in APPENDIX-4 shall be completed

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Note:

1. Commencement of Phase II Construction: Construction of Project Facilities envisaged in Phase II must be commenced as soon as the Annual volume / Throughput of Phase I of the Project reaches 0.60 Million TEUs or within a period of 51 months from the Date of Award of Concession whichever is earlier in accordance with the conditions laid down in this Agreement. Notwithstanding the above, under no circumstances the commencement of construction of Phase II shall be more than 51 Months from the Date of Award of Concession and all facilities shall be commissioned on or before 72 Months from the Date of Award of Concession

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APPENDIX 6
DESIGNS AND DRAWINGS

The concessionaire agrees and undertakes at its cost, charges and expenses to prepare the design and drawing for key components of the terminal for review by the Independent Engineer. The Concessionaire shall ensure preparation of design and drawing through established and professionally qualified personnel. A concessionaire shall conduct necessary investigations/study for preparation of design and drawing.

Guidelines for Design: The Container Berth of quay length 730 m will have to be designed to facilitate berthing of 14,500 TEU vessels. Initally, the Concessioning Authority will provide (-16) m CD water depth at the berth. The Concessioning Authority may consider if commercially viable for further deepening of the channel basin and alongside of the berth areas if necessary guarantee is provided by the Concessionaire for use of additional draft, but is not obligated to do so.

The design and construction of various components in the proposed terminal shall be in accordance with the recognized engineering practice and shall confirm to the relevant standards. **A broad list of such design and drawings is given hereunder which is only indicative and not exhaustive.**

I. **Designs of key components**

(i) Quay piles.
(ii) Diaphragm wall.
(iii) Superstructure such as Deck beams and slabs including service facilities such as crane track, cable trench, bunker rg arrangements etc.
(iv) Fenders and bollards,
(v) Hard standing for Stacking yard,
(vi) RTG track beam,

II **Key Drawings**

(i) Terminal Overall Plot Plan

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(ii) Container Flow Diagram

(iii) Layout of container Stacking yard with RTG and trailer tracks

(iv) Layout of main and service roads

(v) Overall Storm water Drainage System

(vi) Layouts of Utility and Service Buildings

(vii) Plan and Sectional elevation of Utility and Service Buildings

(viii) Layout of the quay wall

(ix) Plan and sectional elevation of quay wall

(x) Layout of Piles & Diaphragm wall

(xi) Electrical system block diagram

(xii) Electrical layout

(xiii) GA diagram of Quayside Gantry Crane

(xiv) GA diagram of Rubber Tyred Gantry Crane

(xv) GA diagram of Reach Stacker

(xvi) GA diagram of top-lift truck

(xvii) GA diagram of tractor-trailer

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APPENDIX 7
TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

[This Appendix shall stipulate the terms of reference for the Independent Engineer which shall include the scope of work (review of design and drawings, notification of objection thereto, inspection of Construction Works and Tests to be carried out, notification of shortfalls if any, issue of completion certificate, seeking of approval from collector of customs for the purpose of operationalizing the facilities and services) which shall include the manner and timeliness of the reports of the Independent Engineer to be submitted while performing the services within the scope of work. Following is an indicative scope of work of the Independent Engineer. The scope would be revised to include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.]

1. **Role and functions of the Independent Engineer**

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

(i) review and approval of DPR;

(ii) review of the Designs and Drawings,

(iii) review, inspection and monitoring of Construction Works;

(iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;

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

(vi) assisting the Parties in resolution of disputes as regards the Design and Drawings,

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(vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(viii) undertaking all other duties and functions as envisaged under the Agreement.

2. **Review of Designs and Drawings**

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**")

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

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

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

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

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

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

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

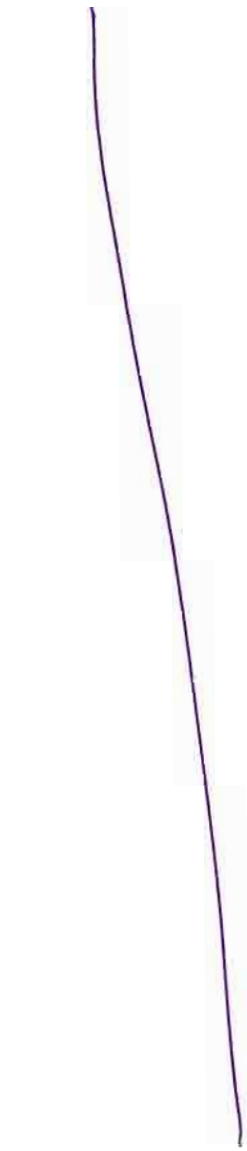
(xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioning Authority.

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

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(xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.







Tests

Depending on the parameters of the Project /Construction Requirements, the Tests shall be carried out by the Concessionaire as per Good Industry Practice shall be stipulated on a project specific basis. The Concessionaire shall be liable for all payments for carrying out the Tests.

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APPENDIX 8
PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONING AUTHORITY/CONCESSIONAIRE

1. PERMITS

The Concessionaire shall at all-time maintain valid Applicable permits that may be required for construction and operation of the terminal. The Concessionaire, at its costs shall obtain such Applicable permits from the concerned Government Authority.

2. CLEARANCE

2.1 Concessioning Authority

The Concessioning Authority has obtained the Environmental Clearance for development of Container Terminal from Ministry of Environment & Forests.

2.2 Concessionaire

The Concessionaire shall be fully responsible to ensure that Environment in general and the water area in particular is not polluted due to the Operations of the terminal. All applicable laws and applicable permits in this connection shall be fully adhered to by the concessionaire as per good industrial practice.

The concessionaire shall give clear indications about the disposal arrangements of waste at the stage of approval. The concessionaire shall be solely responsible to obtain all statutory clearance as may be required by law except for the Environmental Clearance shall be obtained by the Concessioning Authority.

The Concessioning Authority will provide assistance to the extend possible in this regard. However, this will not be obligatory and the Concessioning Authority and the Concessionaire shall take full responsibility for obtaining necessary clearance. The Concessionaire agrees and undertakes to comply with all regulations and directories concerning occupational hazards as issued by the Concessioning

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Authority and relevant authority from time to time. The Concessionaire shall keep the Concessioning Authority informed by sending the copy of the clearances obtained from time to time.

The concessionaire will plan and install comprehensive fire-fighting equipment, fire hydrants etc., as prescribed under the relevant standards for the terminal.

2.3 Pollution Control measures

The concessionaire shall provide and implement various Pollution Control measures as specified in the various Environmental Protection policies and Acts / Rules. The concessionaire will develop green belts in and around the terminal area to comply with the Environmental Requirements

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APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)[5]

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

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

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

In favour of

THE KAMARAJAR PORT LIMITED, company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 1st Floor, 23, Rajaji Salai, Chennai 600 001 (hereinafter referred to as "**the Board**" or "**the Concessioning Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a) The Board, vide its Request for Proposal dated 30th October 2013 (as amended on 24th January 2014) ("the RFP") invited duly short listed bidders to implement a project envisaging Development of Container Terminal at Kamarajar Port (more particularly described in APPENDIX I and hereinafter referred to as "**the Project**");

b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of Adani Ports and Special Economic Zone Limited, a company registered under the Companies Act, 1956, and having its registered office at Adani House, Near Mithakali Six Roads, Navrangpura , Ahmedabad 380 009, Gujarat ("the Applicant") and issued the Letter of Intent No EPL/OP/CT/2013 14th February 2014 ("**LOI**") to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, ("**the Concession Agreement**") the draft whereof was

[5] To be issued by a Scheduled Bank in India.

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provided in the RFP;

c) Pursuant to the LOI the Applicant has promoted and incorporated a special purpose company Adani Ennore Container Terminal Private Limited ("**the Concessionaire**"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.

d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [•] (Rupees [•] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase.

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. _____ ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs [•] (Rupees [•] only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the

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Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [●] (Rupees [●] only).

6. This Guarantee shall not be affected by any change in the constitution or winding

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up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:

a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;

b. shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;

c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

e. shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee,

f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in

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whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

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

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

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

SIGNED AND DELIVERED by

_____ _____ Bank by the

hand of Shri _____ _____ its

and authorized official.

APPENDIX 10
CERTIFICATES

COMPLETION CERTIFICATE

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

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

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

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

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PROVISIONAL CERTIFICATE

1. I, [[•_ (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [•], for the Project on Design build, Finance operate and transfer (DBFOT) basis through [• (Name of Concessionaire)], hereby certify that the Tests specified in Article [•] and Schedule [•] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

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

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

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:	SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)

APPENDIX II

PERSONNEL AND LABOUR REQUIREMENTS

The Concessionaire is expected to employ his own Personnel/Labour.

APPENDIX 12

TARIFFS

CHAPTER – I

1.1. DEFINITIONS

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply.

i. "Port" shall mean Kamarajar Port Limited

ii. "Coastal Vessel" shall mean any vessel exclusively employed in trading between any Termina. or place in India to any other Port or place in India having a valid coastal license issued by the competent authority.

ii. "Foreign-going Vessel" shall mean any vessel other than a coastal vessel

iv. "Container" shall mean the standard ISO container, suitable for the transport and Stacking yard of cargo and must be capable of being handled as a unit and lifted by a crane with a container spreader.

v. "Demurrage" shall mean charges payable for storage of cargo in transit area within the Terminal premises beyond free period, as specified in the Scale of Rates.

vi. "Free period" shall mean the period during which cargo/container is allowed storage free of demurrage charges/ground rent and this period shall exclude Customs notified holidays and Terminal's non-operating days.

vi "Full Container Load" (FCL) shall mean a container containing cargo belonging to one consignee in the vessel's manifest.

viii. "Hazardous container" shall mean a container containing hazardous goods as classified under International Maritime Organisation (IMO.)

ix. "ICD" shall mean Inland Container Depot.

x. "Less than a Containe: Load" (LCL) shall mean a container containing cargo belonging to more than one consignee in the vessel's manifest.

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xi "Over Dimensional Container" shall mean a container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam, etc. Damaged Containers (including boxes having corner casting problem) and Container requiring special devices for lifting is also classified as Over Dimensional Container

xii. "Per day" shall mean a calendar day or part thereof

xiii. "Reefer Container" shall mean a refrigerated container used for carriage of goods with provisions for electrical supply to maintain the desired temperature.

xiv. "Shut Out Container" shall mean a container, which enters into the Terminal as an export intake for a particular vessel as indicated by the Vessel Identification Advice No.(VIAN) Container Advance Information List (COPRAR) and is not shipped into the part called vessel for reasons whatsoever.

xv. "Transshipment container" shall mean any container, which is discharged from one vessel stored in the container Terminal and shipped through another vessel for other port.

1.2. GENERAL TERMS & CONDITIONS

i. The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign going' for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

ii (a). A foreign going vessel of Indian Flag having a General Trading License can convert to Coastal run on the basis of a Customs Conversion Order

(b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.

(c). In cases of such conversion, coastal rates shall be chargeable by the load Terminal from the time the vessel starts loading coastal goods.

(d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by the discharge Terminals

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(e) For dedicated Indian coastal vessels having a Coastal License from the Director General of Shipping, no other document will be required to be entitled to Coastal rates

iii. All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

iv. No claims for refund shall be entertained unless the amount refundable is Rs.100/- or more. Likewise, Terminal Operator shall not raise any supplementary or under charge bills, if the amount due to Terminal is Rs. 100/- or less.

v. Containers less than and up to 20' in length will be reckoned as one TEU for the purpose of tariff.

vi. An LCL Container coming in and going out of the Terminal as a unit load will be regarded as an FCL for the purpose of levying charges.

vii. Users shall not be required to pay charges for delays beyond a reasonable level attributable to the Terminal

viii. In case a vessel idles due to breakdown or non-availability of the shore based facilities of Terminal Operator or any other reasons attributable to Terminal Operator, rebate equivalent to berth hire charges payable to the Kamarajar Port Limited accrued during the period of idling of vessel shall be allowed by Terminal Operator.

ix. The concession will be on all the relevant charges for ship-shore transfer, and transfer from / to quay to / from storage yard as well as wharfage on cargo and containers.

x. Containers less than and upto 20' in length will be reckoned as one TEU for the purpose of tariff

xi. All invoices are issued as due on presentation. Failure to pay may cause a lien to be placed on the goods handled at the Terminal and the responsible party may be denied further use of the Terminal until all outstanding charges have been paid.

xii. The user shall pay penal interest on delayed payments of any charge under this Scale of Rates. Likewise the Terminal operator shall pay interest on delayed refunds. The rate of penal interest will be 14.25% per annum. The penal rate chosen

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will apply to both the Terminal and the port users equally. The delay in refunds will be counted only 20 days from the date of completion of services or on production of all documents required from the users, whichever is later. The delay in payments by users will be counted only 10 days after the date of raising the bills by the Terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services.

xiii. The tariff indicated herein is the Reference Tariff.

xiv. The concessionaire is free to fix tariff based on market forces (ie. Actual Tariff)

xv. The Concessionaire shall pay a revenue share at the rate indicated in the Concession Agreement on higher of Reference tariff or Actual tariff notified whichever is applicable for that year.

xvi The Reference tariff rate will be revised every year based on a variation in the Wholesale Price Index ("WPI"). Such revision shall be based on the indexation against 60% (Sixty percent) of the variation in the WPI for the relevant year beginning 1st January and ending 31st December

xvii. The tariff and its implementation will be based on the principles of common user, non-discriminatory and universal access.

xviii. The Concessionaire should notify the public, the rates and conditionality governing the application of such rates and continue to notify the public any further changes in such rates and / or conditionality.

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CHAPTER – II

CHARGES FOR CONTAINER OPERATIONS

2.1. Charges for handling FCL import and export containers and empty containers:

(a) Handling by Quay Crane including lashing / unlashing charges :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per FCL Container		
-Not exceeding 20' in length	1200	720
-Exceeding 20' and upto 40' in length	1800	1080
-Over 40' in length	2400	1440
Per Empty Container		
-Not exceeding 20' in length	1200	720
Exceeding 20' and upto 40' in length	1800	1080
-Over 40' in length	2400	1440

(b) Transportation from Quay side to Yard and Vice Versa :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per FCL Container		
-Not exceeding 20' in length	820	492
-Exceeding 20' and upto 40' in length	1230	738
-Over 40' in length	1640	984
Per Empty Container		
-Not exceeding 20' in length	410	246
-Exceeding 20' and upto 40' in length	615	369
-Over 40' in length	820	492

(c) Handling at Container yard including lift on / lift off onto / from the Internal Transfer vehicle :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per FCL Container		
-Not exceeding 20' in length	450	270
-Exceeding 20' and upto 40' in length	675	405
-Over 40' in length	900	540
Per Empty Container		

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-Not exceeding 20' in length	225	135
-Exceeding 20' and upto 40' in length	338	203
-Over 40' in length	450	270

Note : Services include lifts at container yard for storage

(d) Handling at Container yard including lift on / lift off for Delivery / Receipt to and from Customers :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per FCL Container		
-Not exceeding 20' in length	450	450
-Exceeding 20' and upto 40' in length	675	675
-Over 40' in length	900	900
Per Empty Container		
-Not exceeding 20' in length	225	225
-Exceeding 20' and upto 40' in length	338	338
-Over 40' in length	450	450

Note : Services include lifts at container yard for landing or loading the container from or to the customer's vehicle.

2.2 **Charges for handling LCL import and export containers :**

(a) Handling by Quay Crane including lashing / unlashing charges :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per LCL Container		
-Not exceeding 20' in length	1200	720
-Exceeding 20' and upto 40' in length	1800	1080
-Over 40' in length	2400	1440

(b) Transportation from Quay side to Yard and Vice Versa :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per LCL Container		
-Not exceeding 20' in length	774	464
-Exceeding 20' and upto 40' in length	1161	697
-Over 40' in length	1548	928

(c) Handling at Container yard including lift on / lift off onto / from the Internal Transfer vehicle :

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Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per LCL Container		
-Not exceeding 20' in length	450	270
-Exceeding 20' and upto 40' in length	675	405
Over 40' in length	900	540

Note : Services include lifts at container yard for storage

(d) Handling at Container yard including lift on / lift off for Delivery / Receipt to and from Customers :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per LCL Container		
-Not exceeding 20' in length	450	450
-Exceeding 20' and upto 40' in length	675	675
-Over 40' in length	900	900
Per Empty Container		
-Not exceeding 20' in length	225	225
-Exceeding 20' and upto 40' in length	338	338
-Over 40' in length	450	450

Note : Services include lifts at container yard for landing or loading the container from or to the customer's vehicle.

2.3. **Charges for handling ICD import and export containers :**

(a) Handling by Quay Crane including lashing / unlashing charges :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Loaded Container		
-Not exceeding 20' in length	1200	720
-Exceeding 20' and upto 40' in length	1800	1080
-Over 40' in length	2400	1440
Per Empty Container		
-Not exceeding 20' in length	1200	720
-Exceeding 20' and upto 40' in length	1800	1080
-Over 40' in length	2400	1440

(b) Transportation from Quay side to container rail yard and vice versa :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)

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Per Loaded Container		
-Not exceeding 20' in length	774	464
-Exceeding 20' and upto 40' in length	1161	697
-Over 40' in length	1548	928
Per Empty Container		
-Not exceeding 20' in length	387	232
-Exceeding 20' and upto 40' in length	581	349
-Over 40' in length	774	464

Note : Services include transport to container rail yard, stowage planning on vessel and yard, data handling, processing and transfer between vessel, Terminal operator and shipping line

(c) Handling at Container rail yard including lift on / lift off onto / from the Internal Transfer vehicle :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Loaded Container		
-Not exceeding 20' in length	450	270
-Exceeding 20' and upto 40' in length	675	405
-Over 40' in length	900	540
Per Empty Container		
-Not exceeding 20' in length	225	135
-Exceeding 20' and upto 40' in length	338	203
Over 40' in length	450	270

Note : Services include lifts at container rail yard for storage

(d) Handling at Container rail yard including lift on / lift off while giving delivery for rail :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Loaded Container		
-Not exceeding 20' in length	450	450
-Exceeding 20' and up to 40' in length	675	675
-Over 40' in length	900	900
Per Empty Container		
-Not exceeding 20' in length	225	225
-Exceeding 20' and up to 40' in length	338	338
-Over 40' in length	450	450

Note : Services include lifts at container rail yard, data handling, processing and transfer between vessel, Terminal operator and shipping line.

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2.4. **Charges for handling Transshipment containers including handling by on-board stevedoring labour at quay side, lashing / unlashing charges :**

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Loaded Container		
-Not exceeding 20' in length	1440	864
-Exceeding 20' and up to 40' in length	2160	1296
-Over 40' in length	2880	1728
Per Empty Container		
-Not exceeding 20' in length	1440	864
-Exceeding 20' and up to 40' in length	2160	1296
-Over 40' in length	2880	1728

Notes:

1. A container originally declared as transshipment container, subsequently moved by rail or road will lose its identity as a transshipment container and shall be treated as normal import container and the prescribed charges as applicable shall be payable.
2. Services include handling by quay crane (discharge and loading), transport and lifts, stowage planning on vessel and yard, data handling, processing and transfer between vessel, Terminal operator and shipping line.
3. A Shut out charge as per Section 2.9 shall apply if (a) The vessel nomination is changed ; or (b) If the vessel nomination is changed from a later vessel to an earlier vessel after the vessel is berthed.

2.5. **Charges for wharfage :**

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Container (box only)		
-Not exceeding 20' in length	70	42
-Exceeding 20' and upto 40' in length	105	63
-Over 40' in length	140	84
Per containerized cargo		
-Not exceeding 20' in length	620	372
-Exceeding 20' and upto 40' in length	930	558

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-Over 40' in length	1240	744

Notes :
The wharfage will be charged on all containers including ICDs, transshipment, LCL and FCL and empty containers.

2.6. Charges for handling Hatch covers for one operation (both opening and closing):

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Without landing hatch cover on quay	980	588
With landing hatch cover on quay	2450	1470

Notes :
Half the rate will be charged if there is only one activity, i.e. either an opening or closing operation.

2.7. Charges for shifting containers within vessel (Restows) :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Within hatch (without landing and re-shipping) – per container		
-Not exceeding 20' in length	600	360
-Exceeding 20' and upto 40' in length	900	540
-Over 40' in length	1200	720
Via quay (shifted by landing on quay and re-shipping) – per container		
-Not exceeding 20' in length	1750	1050
-Exceeding 20' and up to 40' in length	2625	1575
-Over 40' in length	3500	2100

Notes :
No wharfage will be levied on the restow containers and containerized cargo.

2.8. Reefer related and other general services :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Pre-trip inspection (including supply of	1800	1080

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electricity)		
Connection or disconnection Services on board a Vessel	120	72
Cleaning of Container		
-Not exceeding 20' in length	90	54
-Exceeding 20' and up to 40' in length	180	108
-Over 40' in length	270	162
Supply of electricity (including connection and disconnection, monitoring of temperature at reefer yard) per container per 4 hours or part thereof.		
-Not exceeding 20' in length	150	90
-Exceeding 20' and up to 40' in length	225	135
-Over 40' in length	300	180

Notes :

1. The tariff prescribed above does not include parameter setting or repair & maintenance of malfunctioning reefers.
2. The charges prescribed in the schedule above are also applicable to restow reefer containers.
3. Pre-trip inspection of the reefer containers, connection or disconnection services on board the vessel and cleaning of containers are optional services and shall be rendered when requested.
4. Pre-trip inspection of the reefer containers and connection or disconnection services on board the vessels will be uniform irrespective of the length of the containers

2.9. Charges for a shutout container / re nomination of containers :

Particulars	Foreign-Going vessel (Rs)	Coastal Vessel (Rs)
Per Container		
-Not exceeding 20' in length	1300	780
-Exceeding 20' and upto 40' in length	1950	1170
-Over 40' in length	2600	1560

Notes :

1. Above charges shall apply where an export container or transshipment container is shut out and delivered out of the Terminal.
2. In this case, the free storage period will be given to the container in accordance with section 2.11. from the time the container is first received. If the free

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storage period is exceeded, storage charges shall be calculated after the expiry of the free period up to the time of lift on.

2.10. Charges for Hazardous cargo containers / over dimensional cargo containers :

A premium of 25% will be levied over the applicable handling charges prescribed above for respective categories of containers.

2.11 Dwell Time Charges (Foreign and Coastal) :

a. Export – Loaded / Empty Containers

Particulars	Rate per container per day or part thereof (Rs.)		
	20'	40'	Over 40'
First 7 days	Free	Free	Free
8 days to 15 days	300	600	900
16 days to 30 days	600	1200	1800
Beyond 30 days	1200	2400	3600

b. Import – Loaded / Empty Containers

Particulars	Rate per container per day or part thereof (Rs.)		
	20'	40'	Over 40'
First 3 days	Free	Free	Free
4 days to 15 days	300	600	900
16 days to 30 days	600	1200	1800
Beyond 30 days	1200	2400	3600

c. Transshipment Loaded / Empty

Particulars	Rate per container per day or part thereof (Rs.)		
	20'	40'	Over 40'
First 30 days	Free	Free	Free
31 days to 45 days	300	600	900
46 days to 60 days	600	1200	1800
Beyond 60 days	1200	2400	3600

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d. ICD Import & Export - Loaded / Empty

Particulars	Rate per container per day or part thereof (Rs.)		
	20'	40'	Over 40'
First 10 days	Free	Free	Free
11 days to 30 days	300	600	900
31 days to 45 days	600	1200	1800
Beyond 45 days	1200	2400	3600

e. Shut out - Loaded / Empty

Particulars	Rate per container per day or part thereof (Rs.)		
	20'	40'	Over 40'
First 15 days	Free	Free	Free
16 days to 30 days	300	600	900
Beyond 30 days	1200	2400	3600

Notes :

1. Free dwell-time (storage) period for import containers shall commence from the day after the day of landing of the container and for export containers the free period shall commence from the time container enters the terminal.
2. For the purpose of calculation of free time, Customs notified holidays and Terminal's non-operating days shall be excluded.
3. Transhipment containers whose status is subsequently changed to local FCL / LCL / ICD shall lose the concessional storage charges. The storage charges for such containers shall be recovered at par with the relevant import containers storage tariff.
4. Transshipment containers subsequently changing the mode of dispatch to rail shall be treated as other ICD containers for the purpose of levy of storage fees. In such cases, additional shifting charges will be applicable for movement of containers from container yard to ICD yard.
5. The users will not have to pay storage charges for the period during which the Terminal operator is not in a position to deliver / shift the containers when requested by the users.
6. Normal import containers subsequently changing the mode of dispatch to rail will enjoy the free period applicable to normal import containers only.
7. The total storage period for a shutout container shall be calculated from the day following the day when the container has become shutout till the day of shipment/ delivery
8. (i) Dwell time charges for Hazardous containers shall attract 1.25 times the normal applicable charges. (ii) For Over-Dimensional Containers, storage

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charge shall be based on actual number of ground slots the respective container occupies under the respective slab as given above.

9. The storage charges on abandoned FCL containers / shippers owned containers shall be levied up to the date of receipt of information of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions :

(a) The consignee can issue a letter of abandonment at any time.

(b) If the consignee chooses not to issue such letter of abandonment, the container agent / MLO can also issue abandonment letter subject to the condition that, (i) The Line shall resume custody of container along with cargo and either take it back or remove it from the Terminal premises; and (ii) The Line shall pay all Terminal charges accrued on the cargo and container before resuming custody of the container.

(c) The container Agent / MLO shall observe the necessary formalities and bear the cost of transportation and de-stuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for de-stuffing the cargo.

(d) Where the container is seized / confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and de-stuffing. Otherwise, seized / confiscated containers should be removed by the line / consignee from the Terminal premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

2.12. **Charges for Miscellaneous Services :**

S.No	Particulars	Foreign – Going /Coastal (Rs)		
		20'	40'	Over 40'
a	Fixing / removal of seal	200	200	200
b	Lift on / Lift off in the Container yard	600	900	1200
c	Movement of container from one place to another place (within the terminal)	850	1275	1700
d	Opening of door of container for inspection, etc.	600	600	600
e	Shifting of container within the Terminal for customs inspection	850	1275	1700
f	Direct loading	500	750	750
g	Re-shuffling	850	1275	1275
h	Charge of shipment status	600	600	600
i	Change of container status	600	600	600
j	Cancellation of document	100	100	100

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2.13. **Charges for supply of fresh water alongside the container berths :**

Particulars	Rate in Rs.
Per 1000 Litres or part thereof	400

2.14. **Charges for clearance of garbage on board**

Particulars	Rate in Rs.
Per ½ cubic meter bag	250

2.15. **Rebates :**

Rebate at 25% to this scale of rates shall be applicable to users for carrying out various operations with their own arrangements, with the prior written permission of the Terminal operator when the equipments of the Terminal Operator are not available for the reasons given below :

(a) If the Ship's gears are used for loading / unloading containers from ship to shore or vice versa.

(b) If the Terminal user deploys his own tractor trailer for transporting containers from quay to container yard or container yard to quay.

(c) If the terminal user deploys his own equipment for lifting containers from the container yard to truck and vice versa.

(d) If the Terminal user provides labour for lashing / unlashing operation of containers

Note :

1. No rebate will be admissible for back to town containers handled by private equipment.
2. In case of Sl.No (d) above, rebate shall be limited to the number of containers actually lashed.

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CHAPTER III

BERTH HIRE CHARGES

1. Rate of Berth hire charges for vessels called at the Container Terminal :

GT	Rate per hour or part thereof	
	Foreign-going vessel (US$)	Coastal Vessel (Rs)
Any volume of GT	0.016	0.60 *

* USD = Rs. 62/- considered

a. Berth Hire charges shall be levied on ship owners / Steamer Agents. Wherever rates have been denominated in US dollar terms, the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the Market Buying rate notified by the Reserve Bank of India, State Bank of India or its Associates or any other Public Sector Banks as may be specified from time to time. The day of entry of the vessel into the port limit shall be reckoned as the day for such conversion.

b. The day of entry of the vessel to be considered for conversion from dollar denominated tariff to rupee tariff.

c. A regular review of exchange rate shall be made once in thirty days from the date of arrival of the vessels in cases of vessels staying in the terminal for a longer period. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

d. The fraction of a Rupee so arrived at will be rounded off to the next full Rupee.

e. Berth hire for coastal vessels shall be recovered at the rates notified in Rupees only.

f. Gross Tonnage (GT) is the cubic capacity of the whole ship including engine room and crew space but excludes space above deck, cabins, deck shelters, chart houses etc and as recorded in the Certificate of Registry of the Vessel.

g. The vessel should be ready for sailing in all respects with in 2 hours of completion of her cargo work. The information regarding the time of her readiness to sail shall

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be communicated to the Port Signal Station over VHF by the vessel and hoisting of 'G' flag at least 1 hour in advance. A vessel which is not ready to sail after 2 hours of completion of cargo work is liable to pay additional berth hire charges at the rate of 100% of the normal berth hire charges per hour or part thereof. The duration for which additional berth hire is to be charged will be calculated from the time of expiry of 2 hours from completion of cargo work to the time the vessel is ready for sailing.

3. For a vessel which is ready to sail in all respect but could not sail due to Terminal or port operational requirements, berth hire charges will cease after 2 hours of vessel's readiness to sail.

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APPENDIX 13

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

13.1 Base License fee: Rs.79 per m2 with effect from 1.1.2012 which is subject to an escalation at 5% per annum. The base License fee is to be revised once in every 5 years. Next revision of Base License fee is due on 1.1.2017.
However, this will be subject to Land Management Policy Guidelines issued by Government from time to time.

13.2 Applicable Scale of Rates for Utilities and Services are published in the Company website from time to time. The Scale of Rates presently applicable is enclosed

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KAMARAJAR PORT LIMITED

Scale of Rates

I. DEFINITIONS

Company shall mean Kamarajar Port Limited registered under the Companies Act, 1956. Day shall be reckoned from 6.00 a.m. to 6.00 a.m.

Coasting vessel means a vessel which is engaged in the carriage by sea of passengers or goods from any port or place in India to any other port or place in India. The status of the vessel as borne out by its certification by the Customs or the Director General of Shipping shall be the deciding factor for its certification as coastal or foreign going for the purpose of levy of vessel related charges.

Foreign vessel means any vessel other than coastal vessel.

Gross Tonnage (GT) is the cubic capacity of the whole ship including engine room and crew space but excludes space above deck, cabins, deck shelters, chart houses etc and as recorded in the Certificate of Registry of the vessel.

Pure Car Carriers-Vessels intended to load/discharge any wheeled cargo such as cars, automobiles, trucks, semi-trailer trucks, trailers or railroad cars, crusher units etc., that are driven on and off the ship through ramps

Automobiles-Any units which can move on wheels/chain including Murphy.

Cold move means without the power of the engine of the vessel

Entry means entering into the Port limits

Shifting means movement of vessel from one berth to another or from berth to anchorage or any other movement within the port limit. Arrival in to the port and departure from the port shall not be considered as movement for this purpose.

Warping means movement of the vessel in the same berth or to another berth by means of mooring ropes only.

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2. CONDITIONS

a) All charges notified hereunder in various Chapters in terms of U.S. Dollars shall be levied for all Foreign Vessels and Indian Vessels engaged in Foreign Trade. The charges shall be collected from the Owners /Agents in Indian Rupee converting U.S Dollars Rates at market TT buying Rates notified by the State Bank of India / Andhra Bank as on date of arrival of the vessel.

b) A regular review of the exchange rate shall be made once in thirty days from the date of arrival of the vessels in case of vessels staying in the port for more than thirty days. In such cases the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

c) The fraction of a Rupee so arrived at will be rounded off to the next full Rupee.

d) Vessel related charges for coastal vessels shall be recovered at the rates notified in Rupees only.

e) The charges for services and for the use of the crafts and appliances not mentioned in the Scale of Rates are arranged between the Company and the person requiring such services.

f) A Company may, in special cases and for reasons to be recorded in writing exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force or remit the whole or any portion of such rate or charge so levied

g) Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Company, or to be shipped for export, or to be transshipped, shall be payable before the goods, are so removed or shipped or transshipped.

h) For the purpose of Scale of Rates

1. One unit by weight means 1 tonne (1000 kilograms)
2. One unit by volume measurement means 1 cubic metre; and
3. One unit by capacity measurement for liquids in bulk means 1000 litres

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i) In calculating the Gross weight or measurement by volume or capacity of any individual item, fraction upto and including 0.5 shall be taken as 0.5 and fractions over 0.5 shall be taken as one unit.

j) It shall be the primary responsibility of the party filling the Import/Export Application to declare the correct unit and/or units on the application at the time of filing. In case the required units or units not being available in the relative shipping documents, the party shall actually weigh and/or measure the consignment and then declare the same on the Application before filing with the Company. Any under declaration and/or under statement found at the time of test check by the Company will involve the party liable for the penalty.

3. VESSEL RELATED CHARGES

1. Vessel related charges will be charged on the basis of the Gross Tonnage (GT) of the vessels
2. For a vessel carrying deck cargo, the deck cargo will be added to the Gross Tonnage of the vessel for determining the Gross Tonnage on which the charges are to be calculated.
3. For a vessel having dual tonnage, the higher tonnage will be taken into account for calculation of all vessel related charges.
4. A foreign going vessel of Indian Flag having a General Trading License can convert to coastal run on the basis of a customs Conversion orders.
5. A foreign going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.
6. In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods
7. In cases of such conversion, coastal rates shall be chargeable only till the vessel completes discharging operations; immediately thereafter foreign going rates shall be chargeable by the discharge ports.
8. For dedicated Indian Coastal Vessels having a Coastal License from the Director General of Shipping, no other documents will be required, to be entitled to coastal rates

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A. PORT DUES

Particulars (Vessels Chargeable)	Rates per GT
Coastal Vessels	Rs 12.57
Foreign Vessels	USD 0.424

Note:

1. Port Dues shall not be levied on:

   i. Vessels belonging to other Indian Ports or vessels belonging to Government of India
   ii. any pleasure Yachts;
   iii. any vessel which, having left this Port is compelled to re-enter it by stress of weather or in consequence of having sustained any damage

2. For foreign going vessels the Port Dues are payable on each entry into the port

3. For coastal vessels, the due is payable once in thirty days provided that the payment of the due once made shall be valid only for three entries into the port (including the entry on which the payment was made) during the said period of thirty days. In calculating the expiration of the period of exemption in respect of Coasting vessels, the day of payment should be reckoned as one of the 30 days, and the day of entry should be reckoned as the day, whether the dues are actually paid on the day of entry or subsequently, and the date on which the liability to dues is based is that date on which the vessel passes the geographical limits of the Port.

4. For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the Remarks column of its International Tonnage certificate will be taken to be its gross tonnage for the purpose of levying Port Dues.

5. Vessels entering the port and taking in only provisions, water, bunker coal or liquid fuel for their own consumption shall be charged Port Dues at half rates.

6. A vessel entering port in ballast and not carrying passengers but leaving the Port laden shall be charged with only 75 % of the Port Dues with which she would otherwise be chargeable.

7. A vessel entering port but not discharging or taking in any cargo or passenger therein shall be charged with only 50 % of the Port Dues with which she would otherwise be chargeable.

8. A vessel landing a passenger at port without anchoring and proceeding on her voyage is not liable to Port Dues.

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B. PILOTAGE-CUM-TOWAGE FEES

The fees leviable for piloting vessels in and out of the harbour includes services of the Ports Pilot, required number of tugs and launches and mooring crew. The rate specified below is inclusive of one inward and one outward movement and shifting of vessels for Port convenience

Coastal Vessels (per GT) (in Rupees)	Foreign vessels (per GT) (in USD)
19.04	0.656
Minimum charges payable 35,200/-	Minimum charges payable 1200

Note:

(a) For inward / outward / shifting/ warping, the charges are as following

Sl. No.	Services	Operations	
		Hot Move	Cold Move
1	Inward Pilotage	50%	100%
2	Outward Pilotage	50%	100%
3	Shifting Pilotage	50%	100%
4	Warping	Rs.12,080/- for Coastal vessels USD 412 for Foreign vessels	

The above percentage of charges shall be applied on the rates shown under Pilotage and towage fees.

(b) For this purpose, turning round of a vessel within the berth is also considered as a shifting

(c) Pilotage will not be compulsory in case of vessels upto 200 GT. Such vessels may, however, ask for Pilot if they so desire on payment of fees as specified in the Schedule of Pilotage fees

Pilot detention Charges

If the vessel is not able to move/cast off from the berth within 30 minutes of Pilot boarding due to any fault on the part of the vessel, the vessel is liable to pay an additional charge at the rate of 145 USD (Rs. 4,192/- for coastal vessels) per hour or part thereof, beyond thirty minutes till the vessel moves / vacates

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Pilot cancellation charges

If the movement of the vessel is cancelled after Pilot boarding due to any fault on the part of the vessel, a cancellation charge of USD 286 (Rs. 8,384/- for coastal vessels) will be levied.

In case a vessel is not ready for sailing as scheduled as per the unberthing request, she must inform the Port Signal Station over VHF at least 2 hours before the schedule time for cancellation of pilot. A vessel not able to cancel pilot booking at least 2 hours before the schedule time shall be liable to pay 143 USD, for coastal vessels Rs. 4,192/-

C. BERTH HIRE CHARGES

Coal berths (CB1 and CB2), General Cargo Berth and Finger Jetties

Rate per Gross Tonnage per hour or part thereof	
Coastal Vessel (in Rs.)	**Foreign vessel (in USD)**
0.22 (minimum Rs. 296/- per Hour)	0.003 (minimum USD 10 $ per Hr)

The vessel should be ready for sailing in all respects within 2 hours of completion of her cargo work. The information regarding the time of her readiness to sail shall be communicated to the Port Signal Station over VHF by the vessel and hoisting of 'C' flag at least 1 hour in advance. A vessel which is not ready to sail after 2 hours of completion of cargo work is liable to pay additional berth hire charges at the rate of 100% of the normal berth hire charges per hour or part thereof. The duration for which additional berth hire is to be charged will be calculated from the time of expiry of 2 hours from completion of cargo work to the time the vessel is ready for sailing.

For a vessel which is ready to sail in all respect but could not sail due to port operational requirements, berth hire charges will cease after 2 hours of vessel's readiness to sail.

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D. Vessel Related Charges applicable for Pure Car Carriers only calling at General Cargo Berth:

Sl.No	Vessel Related Charges for Pure Car Carriers vessels	Unit	Tariff (Rates in USD)
1	Port Dues	GT	0.34
2.	Pelotage	GT	0.525
3.	Berth Hire Charges	GT per hour	0.008

The base rate of vessel Related Charges will be revised on revision of Scale of Rates by EPL or any other authority as the case may be from time to time

Note: Any vessel which continues to occupy berth after the expiry of the time indicated in the notice served on the vessel to vacate the berth (notice of which had been given at least 12 hours in advance) shall pay additional berth hire charges at the following rates. The time to be calculated from the expiry of the notice period till the vessel vacates the berth

1. For the first two days - At four times the rate of the berth hire charges for authorized occupation
2. For third day and for subsequent days - At six times the rate of berth hire charges for authorized occupation
3. The additional berth hire charges shall be in addition to normal berth hire charges payable under the schedule
4. Vessels double banked with another vessel occupying a berth, will be charged two-third (2/3) of the berth hire charges specified above
5. Rate at anchorage at port basin or mooring berth or the vessel at mooring inside the basin will be half the rate as per above Schedule

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4. CARGO RELATED CHARGES

WHARFAGE

S. No.	Nomenclature	Unit	Rate
1	Coal & Coke	1 Tonne	Rs.130.00
2.	Cars and other automobiles	Ad valorem	0.40%
3.	Machinery Items	Ad valorem	Foreign - 0.22% Coastal – 0.13%
4.	Timber Logs	Cubic Meter	Foreign - 25.30 % Coastal 15.18%
5	Other Goods	1 Tonne	Rs 60.00
6	Other Goods	Ac valorem	0.5%

Note:

Ad valorem Levy:- The percentage rate of 'Ad valorem' unit shall be as follows:

(a) **Goods imported:-** The percentage levy shall be on C I F value as assessed by Customs for Import goods.

(b) **Goods exported.-** The percentage levy shall be on F.O.B value as assessed by Customs for Export goods.

(c) **Coastal goods:-** The value to be taken for Ad valorem levy shall be given in the Coastal Bill of Lading/Invoice.

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Demurrage Charges:To levy the demurrage charges for automobile units as set out below :

Days	Charges per vehicle per day or part of the day	Remarks
Upto 15 Days	Free	The date of automobile entry into port and the date of export of automobile units will not be counted for levying of demurring Charges.
16 to 20 days	Rs.24/-	
21 to 25 days	Rs.48/-	
26 to 30 days	Rs.72/	
Beyond 30 days	Rs.96/-	

Wharfage for handling transshipment of automobile units & cargo and demurrage charges:

S.No	Transshipment Tariff	Rs. Per Car/per Movement
1	Cars up to 1400 CC	Rs.1,100/-
2.	Cars above 1400 cc	Rs.1,500/-
3	Van/ SUV	Rs.3,000/-
4.	Bus/ Truck and Heavy vehicles	Rs.4,500/

Transshipment Demurrage Charges:-

Further, free time of 20 days is allowed for storing the transshipment cargo. This excludes the customs notified holidays and Port non-working days. Beyond the period, the demurrage charges shall be recovered.

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Transshipment Demurrage Charges (Automobile Units)

Days	Charge per vehicle per day Or part of the day
Upto 20	Nil
21 - 25	Rs.24/
26 - 30	Rs.48/-
Beyond 30	Rs.96/-

Demurrage charges for the timber logs:

Days	Charges payable per Wharfage unit (per cubic meter)per day or part thereof
Upto 7 days	Free
8 to 15 days	Rs.13/-
16 to 25 days	Rs.26/-
26 to 56 days	Rs.39/-
Thereafter	Rs.65/-

Terms and conditions for Wharfage

In respect of Bulk cargoes the dues shall be recovered on the manifested tonnage

If any question arises as to the class fixation of any goods, it shall be referred to the Board of Directors for decision and the Board shall decide the question, which shall be final.

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On packages containing articles of miscellaneous character, charges shall be levied at the rate applicable to the articles on which the highest rate is chargeable.

In case of goods not otherwise specified where the value of the cargo is not available or could not be assessed the wharfage levy will be on weight-tonne basis at the above- mentioned rate

5. HIRE CHARGES FOR PORT CRAFTS

For hiring the Port crafts, the following charges will be applicable -

Craft	Rate per hour	
Tug	18,120/-	394
Pilot Launch	4,320/-	94
Mooring Launch	1,920/-	42

Note.

(i) The hire charges will be for a minimum period of 30 minutes

(ii) Above 30 minutes of utilization of craft, hire charge will be calculated on pro-rata basis rounded off to next 10 minutes

(iii) The duration will be calculated from the time of casting off the jetty to the time of arrival back to the jetty

6. Miscellaneous charges:

S.No	Description	Coastal vessel (in Rs.)	Foreign vessel (USD)
1	Use of mooring gang per mooring / unmooring operation not covered under Pilotage	2,760/-	60
2	Bollard pull test (each operation)	25,000/-	544

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SCALE OF LICENSE FEE FOR ALLOTMENT OF SPACE & WAY LEAVE CHARGES

Scale of License Fee for allotment of space under Monthly License and Annual License for Port related purpose

Item No	Description of Space	Unit	License Fee
1	Way Leave Charges *(with effect from Calendar year 2011)* a. For Pipelines of 8" dia and above b. For pipelines lesser than 8" dia	Per running meter or part thereof Per running meter or part thereof	Rs. 104/- per Calendar year or part thereof Rs. 52/- per Calendar year or part thereof
2	Ground Rent (*) Open Space Open Space (Hardened area)	Per Sq.m. or part thereof Per Sq.m. or part thereof	*Rs. 20/- per Calendar month or part thereof *Rs. 40/- per Calendar month or part thereof
3	Building allotted for use as office accommodation (*) Building with RCC roof and terrace within the Port Premises Buildings with ACC sheet and in other similar roof like GIC within the Port	Per Sq.m or part Thereof - do -	*Rs.100/-per calender month or part thereof *Rs.75/-per calender month or part thereof
4	Covered Space for use as site stores, equipment maintenance, etc., (*)	Per Sq.m or part thereof	*Rs.40/-per calender month or part thereof

* The above rates are effective from 1st April 2004 and escalation @ 5% compoundable per annum.

*

†The Port shall have an option to re-fix the base license fee every five years.

POLICY OF ALLOTMENT:

1. Applications for the allotment of space should be made in writing by the Port Users / Institutions connected with Port related activities addressed to the Director (Operations).
2. The space will be allotted under Monthly License if the period is upto 11 months or under Annual License if the period is more than one year but less than three years.
3. It shall be in the KPL's discretion to allot or refuse to allot space on terms of License.

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Conditions of Licensing of Space by KPL under Monthly License for a period upto eleven months

1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for one month in advance in case of allotment under monthly License as Security Deposit, which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the Licensor without any arrears. If there is any arrears of License fee, or any other amount due to the Licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the Scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i e.) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc., if provided to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license.
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent local authorities and obtain all statutory clearances as may be required by law including environmental clearances.
9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.
13. Encroachment or unauthorised occupation of the KPL's land and Stacking yard of cargo on the KPL's land and Stacking yard of cargo on the KPL's Railway tracks, plants, equipment, etc., causing obstruction to the movement

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of traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed.

14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid.
16. Not to sublet or underlet, transfer or mortgage, assign or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.
17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.
18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.
19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever.
20. If the licensee shall make default in payment of the whole or any part of the said

monthly license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then and in any of such events it shall be lawful for the licensor at any time thereafter to re enter upon the said premises or any part thereof in the name of the whole and re possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained.

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21. If there shall be any license fee due and owing to the licensor at the time of such re-entry and the licensee shall fail to pay the same on demand it shall be lawful for the licensor to distrain upon any monies which may have been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises.
22. The License shall not be automatically renewable. If the Licensee requires to renew
    the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made seven days before the expiry of the license period. If the licensee likes to renew beyond eleven months, the conditions applicable for Annual License for a period of one year and above, but less than three years shall automatically apply, such as the licensee shall pay License Fee for three months in advance as Security Deposit.
23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.
24. The Licensees shall vacate the space occupied by them if the license is not renewed.
    The monthly license shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition, the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.
25. No compensation shall be payable by the Port in the event of refusal to renew the lease.
26. The KPL shall have the right to terminate the License at any time by giving seven days notice and resume possession of space allotted. No compensation will be paid in this regard by KPL.
27. Any change in the constitution of the licensee firm or business shall in no way affect
    the terms of the License.
28. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur.

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Conditions of Licensing of Space by KPL under Annual License for a period of one year and above, but less than three years

1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for 3 months in case of allotment under Annual License for 1 year and above but less than 3 years as Security Deposit which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the licensor without any arrears. If there is any arrears of License fee, or any other amount due to the licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i e..) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc. if provided, to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee.
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent statutory authorities or the Inspector of Explosives, Department of Explosives, Government of India or whomsoever concerned in relation to the storage of the goods under the monthly license.
9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL.
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary.
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.
13. Encroachment or unauthorized occupation of the KPL's land and Stacking yard of cargo on the KPL's land and Stacking yard of cargo on the KPL's Railway tracks, plant & equipment, etc., causing obstruction to the movement

of traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed

14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.

15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid

16. Not to sublet or underlet, transfer or mortgage, assign to or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.

17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.

18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.

19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever

20. If the licensee shall make default in payment of the whole or any part of the license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then and in any of such events it shall be lawful for the licensor at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and re-possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained

21. If there shall be any license fee due and owing to the licensor at the time of such re-entry and the licensee shall fail to pay the same on demand it shall be lawful

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for the licensor to distrain upon any monies which may have been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises

22. Annual License and License below three years shall not be renewed automatically. If the Licensee requires to renewal of the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made two months before the expiry of the license period.
23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.
24. The Licensees shall vacate the space occupied by them if the license is not renewed. The Annual License shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition, the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.
25. No compensation shall be payable by the Port in the event of refusal to renew the lease.
26. The KPL shall have the right to terminate the License at any time by giving one- month notice in case of Annual License and resume possession of space allotted. No compensation will be paid in this regard by KPL
27. In the event of the license being terminated by the licensee by giving the required notice within the period of the first year of the license to make good the difference in the license fee between the rate of license fee per square metre allotted or part thereof per calendar month or part thereof leviable for occupation for a period less than one year and license fee per square metre allotted or part thereof per calendar month or part thereof mentioned in the license, from the date of commencement of the license to the date of vacation of the space allotted
28. Any change in the constitution of the licensee firm or business shall in no way affect the terms of the license
29. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur

Additional General Conditions in respect of Covered Space (Warehouse) and Covered Space other than warehouse

The licensees shall be liable for the following

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1. To the said license fee being revised in accordance with the amendments to the KPL's Scale of Rates from time to time, affecting the rates of license fee laid down in the said Scale.
2. To pay the said license fee herein before reserved or the revised license fee under Clause (3) &(4)in Scale of License Fee, as the case may be, from the date of allotment of space and shall be remitted for each calendar month in advance
3. To pay in addition to the license fee stipulated above, the charges of water and electricity consumed every month at the rates fixed by the KPL from time to time, together with the installation and maintenance charges on electrical installations every month as may be fixed by the licensor from time to time.
4. To keep the doors of the premises locked and secured outside the working hours laid down by the KPL
5. To yield up the said premises at the determination of the license in goods and tenantable repair
6. Not to use the premises as Private Bonded area without prior permission from the KPL and in the event of premises being used as Private Bonded area higher rate of license fee as may be fixed from time to time shall be payable by the licensee. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
7. In the event of the licensor giving the licensee notice to terminate the license, the licensor shall not be bound to pay any compensation whatsoever
8. The licensee shall not at any time during the currency of the license put up any construction over the land licensed to him except with the written permission in writing of the licensor
9. If the licensee puts up a construction without the written permission of the licensor the construction so put up shall become the property of the licensor and the licensee is not entitled to any compensation therefor
10. If the Licensor does not require the construction so put by the licensee without the permission of the licensor, the licensee shall remove the construction at his cost and restore the property in as good a condition as it was at the time he was put in possession, within a reasonable time during the currency of the license failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee
11. If the licensee puts up a construction with the written permission of the licensor, the licensor shall have the option to possess the construction so put up and in case the licensor requires the construction, the licensor shall pay compensation to the licensee in a sum mutually agreed upon at the expiry of the license
12. If the licensor does not require the construction put up with the permission of the licensor or if the licensor and licensee fail to settle the quantum of compensation to be paid, the licensor is entitled to call upon the licensee to remove the construction so put up at his cost and restore the property in as good a condition as it was at the time the licensee was put in possession, within a reasonable time, failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee

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APPENDIX 14

MINIMUM GUARANTEED CARGO

Minimum Guaranteed Cargo throughput pertaining to relevant articles and Appendix shall be as follows:

Period starting from Date of Award of Concession	Minimum Guaranteed Cargo Throughput in million TEUs
1st year	0
2nd year	0
3rd year	0.10
4th year	0.21
5th year	0.35
6th year	0.49
7th year	0.63
8th year	0.70
9th year onwards	0.84

Note:

1. Year means the period of twelve months commencing from the date of Award of Concession and every twelve months period thereafter, during the terms of this agreement.

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APPENDIX 15

PERFORMANCE STANDARDS

1. **Gross Berth Output**

In the case of containers the crane rate shall be measured by dividing the total number of TEUs lifted on/off from ships by the elapsed crane time. The elapsed crane time is the total allocated crane hours less operational and non-operational delays.

The indicative norms for Gross Berth Output are as follows:

Main line vessel	25 moves per hour
Feeder vessel	17 moves per hour

Weightage in case of a shortfall in meeting the prescribed performance standard

2. **Transit Storage Dwell Time**

The Transit Storage Dwell Time for container shall mean the total time for which the container remains in the terminal. The Transit Storage Dwell Time for container shall be calculated as an average and shall be the sum of the transit storage of each container handled during the month at that terminal divided by the number of containers. To further clarify, the date and time a container is discharged from the vessel till the said container leaves the out-gate of the terminal is the total transit storage time for import box. In case of export the time and date from which the container enters the terminal till the time and date it is loaded on to a vessel will be the storage time. The details of time of discharge, gate-in, gate-out and loading need to be maintained in respect of each container including ICD containers.

Unclaimed container or any container that has been detained by the customs or any other Government Authority may be excluded.

The indicative norms for Transit Storage Dwell Time are as follows:

Import Container at Terminal	2 days
Export Container at Terminal	4 days

Weightage in case of a shortfall in meeting the prescribed performance standard

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3. **Turn around Time for receipt/delivery operation**

The Turn around Time for receipt/delivery operation shall be the sum of the time taken for loading/ unloading of cargo divided by the number of trucks/trailers/rakes dKPLayed as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a singie entry into the terminal, the time allocated shall be doubled for that truck/trailer/rake

The Indicative norms for Turn around Time for receipt/delivery operation are as follows:

Trailer for Container (Single Operation)	2 hours
Trailer for Container (Double Operation)	4 hours

Weightage in case of a shortfall in meeting the prescribed performance standard

Performance Evaluation and calculation of liquidated damages

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one percent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten percent) in the average performance which shall be assessed in the following manner.

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 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. For example, if there is a shortfall in Gross Berth Output by x%, Transit Storage Dwell Time by y% and Turn around time for receipt/delivery operations by z% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be (0.7x+0.2y+0.1z)%.

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APPENDIX 16

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [•] day of [•] 20[•].

AMONGST

1 [• LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [•] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2 [• (name and particulars of Lenders' Representative)] and having its registered office at [•] acting for and on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3 [• (name and particulars of the Escrow Bank)] and having its registered office at [•] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes), and

4 BOARD OF DIRECTORS for KAMARAJAR PORT LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at P.T. Lee Chengalvaraya Naicker Maligai, 1st Floor, 23, Rajaji Salai, Chennai 600 001, hereinafter referred to as "**the Concessioning Authority**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

(A) The Concessioning Authority has entered into a Concession Agreement dated [•] with the Concessionaire (the "**Concession Agreement**") for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.

(B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Budget" means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

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

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

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

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

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Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

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

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2.3 Establishment and operation of Escrow Account

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

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

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

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

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Selectee, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a Party hereto and the

Selectee shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Selectee

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

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

(b) all funds received by the Concessionaire from its share-holders, in any manner or form;

(c) all Fee levied and collected by the Concessionaire;

(d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and

(e) all proceeds received pursuant to any insurance claims.

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

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

(a) all taxes due and payable by the Concessionaire;

(b) towards License Fee;

(c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

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(d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

(e) towards its debt service obligations under the Financing Documents;

(f) towards Royalty and other sums payable to the Concessioning Authority and Liquidated damages, if any;

(g) towards any reserve requirements in accordance with the Financing Documents,

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

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

4.3 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with ARTICLE 17 of the Concession Agreement shall be appropriated in the following order of priority:

(i) towards taxes and statutory dues payable by the Concessionaire;

(ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

(iii) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

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

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settlement by the Lenders and/or Concessioning Authority

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of

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the Concessionaire:

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business Days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

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

5.5 Regulatory approvals

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

6. ESCROW DEFAULT

6.1 Escrow Default

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

(a) the Concessionaire commits breach of this Agreement by failing to deposit/cause the deposit of any receipts into the Escrow Account;

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(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

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

9. INDEMNITY

9.1 General indemnity

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

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

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage,

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cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

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

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

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

10.2 Waiver of sovereign immunity

The Concessioning Authority unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessioning Authority with respect to its assets;

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(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

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

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

(b) shall not affect the validity or enforceability of this Agreement in any manner.

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

10.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity

shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

10.8 Severability

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

10.9 Successors and assigns

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

10.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

Kamarajar Port Limited Chennai

The Concessioning Authority

CHAIRMAN CUM MANAGING DIRECTOR

KAMARAJAR PORT LIMITED

23, RAJAJI SALAI, 1ST FLOOR

CHENNAI 600 001

Fax No: 044 25251666

The Concessionaire

The DIRECTOR

_____ _____Ltd

_____ _

___ _____

Fax No _____

The Lenders/Lenders representative.

_____ _____Ltd

___ _____ _____ __

_____ _____ _____ _____

Fax No.

The Escrow Bank:

__ _____Ltd

_____

_____ _____ _____

Fax No. _____

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

number.

10.11 Language

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

10.12 Authorised representatives

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

10.13 Original Document

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





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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

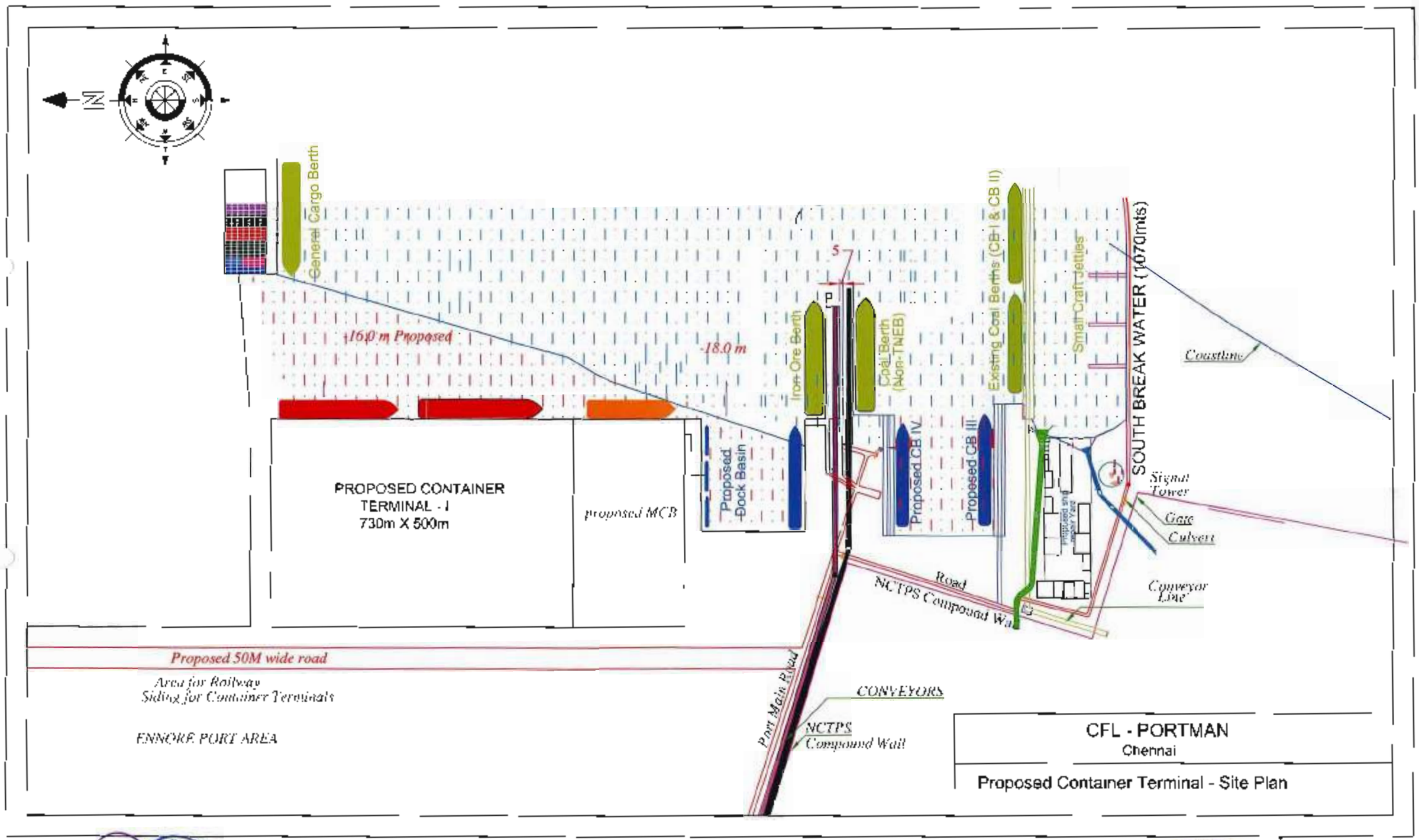
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ANNEXURE-I



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APPENDIX -17

Response to the queries of RFP Document

Kamarajar Port Limited Chennai

ADANI ENNORE CONTAINER TERMINAL PVT LTD

at Ennore Port

Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
1.	RFP Clause no 1.2.4 Pg no 13	It has been mentioned that bidder is required to deposit a Bid Security of Rs. 25.40 Crore in the form of Bank Guarantee along with its Bid. It is our request that the amount of Bid Security (i.e. 25.40 Crore) shall be reduced to half i.e. Rs.12.70 crore from the current advised amount as per RFP document. Further, as per Model Request for Proposal documents for the Port Project, Bid Security amount shall be 1% of the Project Cost(which is worked out to be Rs 12.70 Crore for the Project)	RFP clause shall prevail
2.	Article 3.1 (a) DCA Pg. no. 29	As per Conditions Precedent, Furnishing copy of Management Contract is required. We understand that this point will not be applicable for the Bidder who has O&M experience itself. Kindly advise.	Refer clause 2.1.18 (a) of RFP for clarity.
3	Article 3.2 DCA Pg no. 30	The period for complying with Conditions Precedent (CP) is given as 90 days from the date of the Agreement. We have noticed that in other Concessions at Major Ports, the time frame for compliance CPs is given as 180 days. Hence we request you to kindly consider changing the days to 180 days instead of the present 90 days	DCA clauses shall prevail.
4	Article 8.1 Appendix 12 DCA Pg.no.60	Kindly provide the Tariff Order/Notification of Charges for Container Operations? Also provide details of any other charges which will be required from the users of this project facility?	Refer Appendix 12 of amended DCA
5.	Article 8.3 DCA Pg.no 60	Kindly explain what is the 'Infrastructure Cess' which is to be collected from users by Concessionaire on behalf of Concessioning Authority? What will be the basis, method and working of such infrastructure cess?	The modalities of infrastructure cess if any shall be mutually discussed and decided.

Kamarajar Port Limited Chennai

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
6.	Article 9.1 DCA Pg.no.61	The License Fee amount has been stated as Rs. 2,88,35,000/- per annum Kindly provide us the calculations of the same.	The lease rent shall be as per the SOR of EPL which is subject to escalation & revision as per Land policy guidelines. The lease rent specified in the DCA is as on 1.1.2012 i.e. Rs. 79/- per sq.m. per annum for the area of 365000 sq.m (730 m x 500m). The amount shall be revised at the applicable rates as on the date of signing of Concession Agreement
7.	Appendix 1 – (A) (B) – project site DCA Pg.no.121	The proposed project site location has been described in the cl. 1 and cl. 2. However, to know the exact location and for working out the realistic bid for the proposed project, kindly provide the Auto CAD drawing showing the boundary of the project site in co-ordinate system. Also please clarify whether there is any tree, existing structure or electric pole inside the proposed location of the project site. If yes, please provide the details of it.	PDF drawing showing the proposed area / land are given in Annexure III Refer the amended DCA for Appendix-I Bidder may inspect the site and ascertain
8.	Appendix 1 – (A) (B) – project site DCA Pg.no.121	We request you to clarify whether authority can make available the additional land adjoining to the proposed terminal in future to enhance the operation of the Terminal.	No. Refer the amended DCA for Appendix-I
9	Appendix 1 – (A) (B) – project site DCA Pg.no.121	Is Concessionaire expected to provide some facilities to CISF? If not, is Concessionaire expected to make any payment to CISF for security? If yes, details may be provided.	No. Presently, no such provisions in this regard. However, such type of arrangements / facilities to be taken care based on the Government Guidelines. Refer the amended DCA for Appendix-I

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
10.	Appendix 2 – port asset Cl. 2 Dredging DCA Pg.no.123	It has been stated that the Concessioning Authority shall provide the dredged depths in Berth pocket, approach and basin area within 32 months. Please furnish the detail schedule of the same to synchronize the jetty construction work with dredging work. Can dredging in berth pocket be done prior to Jetty Construction? Also please furnish the basis of calculation of water depths in front alongside berth, basin and approach channel. (Eg. Size of the vessel, under keel clearance, Siltation allowance, etc.) The design vessel size has been given for 14,500 TEU vessel having draft of 15.5 m. However, as per Draft Concession Agreement the dredged depth provided by the Port Authority in front of berth will be (-) 16.0 m CD. Hence, considering 10 % under keel clearance vessels up to draft of 14.6 m can be manoeuvred. This will restrict the vessel size up to 12,000 TEU. Please clarify For 14,500 TEU vessels the minimum water depth requirement in berth pocket will be (-) 17.1 m CD. Whether in berth pocket Concessioning Authority shall provide dredged depth of (-) 17.1 CD?	The dredging will be carried out in synchronisation with the construction of berth. Refer Appendix 6 of DCA.
11.	Appendix 2 – port asset Cl. 3 Supply of Power and Water DCA Pg.no.123	It has been stated that based on the availability of water and power, on request the Concessioning Authority will provide during the construction stage. Please clarify that how much water and Power will be available along with the tapping point. Also please clarify that in case if additional power and water (other than available) for the terminal construction and operation is required, where will be the tapping point or sources of the same	Based on the availability of water and power, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The concessionaire will make own arrangements for tapping the same from the main source and check the suitability of water for construction etc.
12.	Appendix 2 – port asset DCA Pg.no.123	Port Trust is ready to provide greater depths if commercially viable. Let's say on the guarantee given by BOT Operator, the depth alongside the berth is increased to (-) 17 m in future by the Port	Refer Appendix 6 of DCA

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
		Authority To cater to above mentioned scenario, the design of berth will require a change. Hence kindly advise as to what should be the design dredge depth for berth before starting the construction?	The proposed container Berth will have to be designed to facilitate berthing of 14,500 TEU vessels
13.	Appendix 4 and 4A – Project requirement cl. 2.0 DCA Pg.no.140 to 142	The list of the equipment has been shown in this section to handle the 1.4 m TEU container cargo in accordance with the performance standards. Authority to please clarify that whether bidder can alter scheme and requirement of the equipment to match the project requirement?	No. of equipments / specifications indicated in Appendix 4, 4A & 4B are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
14.	Appendix 4 and 4A – Project requirement cl. 2.0 DCA Pg no 140 to 142	Can the BOT operator get the Tractor Trailers on lease instead of buying them?	Equipment Tractor Trailer referred in Appendix 4, 4A & 4B are the minimum requirement to be owned by the concessionaire. The Concessionaire may augment the said equipment to increase the efficiency / productivity of the terminal without affecting the Royalty (revenue share) payments Refer the amended DCA for Appendix-4
15.	Appendix 4 and 4A – Project requirement DCA Pg.no.140 to 142	From the Project Requirements it can be seen that Railway Handling facility is not included in the scope of BOT Operator for this terminal. Kindly advise as to who will develop the Railway Handling Facility for rail bound container cargo of this terminal?	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		What will be the development schedule for this Railway Handling facility? Whether the same will be synchronised with the development of this terminal?	been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal.
16.	Appendix 4 and 4A – Project requirement DCA Pg.no.140 to 142	We strongly feel that division of railway operations from container terminal operations will adversely affect the efficiency of the terminal. The BOT operator will not be able to offer a composite charge to the trade. It will also delay the work as two different operators for container terminal and railways will follow their own processes. Other Container Terminals operating near to Ennore Container Terminal will score over this problem and in long term it will open up risk of losing cargo to nearby terminals. Hence we request the Port Authority to include the scope of railway operation in the scope of BOT Operator of Container Terminal.	The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc., are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.
17.	Appendix 8 –Permits and clearances CL 2.1 requirement DCA Pg.no.165	It has been stated that Concessioning Authority has obtained the Environmental Clearance from the MoEF. Please furnish the copy of the same.	Will be provided to the successful bidder at appropriate time.
18.	Appendix 11	Will the BOT operator required to utilise or employ any Port	No.

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
	Personnel and Labour requirement DCA Pg.no.175	Labour?	
19.	Appendix 14 – Minimum Guaranteed Cargo DCA Pg.no.181	As per the DCA, the Minimum Guaranteed Cargo (MGC) is stated as 0.10 Mil TEU in 3rd year and 0.203 Mil TEU in 4th year if the bidder is choosing to develop project in phases. We feel that the MGC given is on higher side in initial years and can be reduced. Port Authority should start with an MGC of 5 % of the capacity in 1st year of operation. This means that MGC should be kept at 0.07 Mil TEUs in year one and then should be increased in a smooth manner.	Refer amended DCA DCA clauses shall prevail.
20.	Chapter-4 Cl. 4.4 DFR Pg.no.33	It has been stated that wave tranquillity study has been carried out by CWPRS. Please furnish the copy of the same	The available documents are enclosed as Annexure V.
21.	Chapter-4 Cl. 4.5 PFR Pg.no.35	It has been stated that MBH-12 to MBH-14 has been in the vicinity of the proposed project site area, which can be further seen in the basin area as per Figure -4 Pg. 37. Authority to please clarify that whether any other borehole details are available in Backup yard and nearby jetty area? If yes, please furnish the same.	The available bore hole details are provided in the DFR.
22.	Chapter-4 Cl. 4.5 PFR Pg.no.37	The image of figure - 4.3 Annexure - 4.1 is not clearly readable. Please furnish the readable version of the same.	The available drawings are enclosed as Annexure IV.
23.	Chapter-4 Cl. 4.7.1 PFR Pg.no.40 and 41	It has been stated that Deck top Level will be (+) 5.00 m CD. Can authority elaborate the reasons / calculations or any such criteria to arrive on the deck level?	This has been adopted in order to keep the deck top level same as of nearby berths.
24.	Chapter-4 Cl. 4.7.2 PFR Pg.no.42 and 43	Para on Container Parking bays described the layout of the terminal. Authority to please clarify that whether bidder can alter scheme of the terminal to match the project requirement. Can bidder provide the wider spanned RTG and higher stacking modules up to 45 X 7 configurations?	The layout is only typical. Bidder can design as per the requirement. No. of equipments / specifications indicated in Appendix 4, 4A & 4B are to be owned by the concessionaire. The concessionaire may

Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
25.	Annexure 4.1 PFR Pg. no. 55	It is mentioned in feasibility report, the Storage (live) load of 50 kN / m2 shall be considered on Berth. For container berth having RMQC cranes and Fork lift on berth live load due to storage shall be 30 kN / m2. Please clarify the basis of the 50 kN / m2 live load.	The details provided in the Feasibility Report in Annexure 4.1 are only indicative. The Concessionaire has to make own assessment for the design requirements as per the relevant Codal provisions i.e Indian / Foreign standard specifications
26.	Annexure 4.1 PFR Pg. no. 55	It is mentioned that the berth will consist of 4 rows of bored cast-in-situ piles of 1200 mm dia with a diaphragm wall of 1200 mm thick at rear side to retain the soil. Authority to please clarify that whether bidder can alter scheme or layout of the jetty to match the requirement for the proposed development?	
27.	Annexure 4.1 PFR Pg. no. 55	It is mentioned that the size of cell fender is HNC 3500 for maximum vessel size of 14,500 TEU vessel and considering 0.15 m / sec approach velocity. As berth is well inside the basin with protected by breakwater, berthing condition shall be "Sheltered with difficult" and approach velocity shall be 0.10 m /sec (as per Table - II of IS 4651; Part-III). Please Clarify the basis of the 0.15 m / sec velocity. Also to please clarify that whether bidder can alter the fender type to match the requirement for the proposed development?	
28.	Annexure 4.1 PFR Pg. no. 59	The design vessel size has been given for 14,500 TEU vessel having draft of 15.5 m. However, as per Draft Concession Agreement the dredged depth provided by the Port Authority in front of berth will be (-) 16.0 m CD. Hence, considering 10 % under keel clearance vessels up to draft of 14.6 m can be	Initially, the Concessioning Authority will provide (-)16 m CD water depth at the berth. The Concessioning Authority may consider if commercially viable for further deepening of the channel basin and

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Sinn.	Clause Reference	Query of the Applicant	Response by EPL
		manoeuvred. This will restrict the vessel size up to 12,000 TEU. Please clarify. For 14,500 TEU vessels the minimum water depth requirement in berth pocket will be (-) 17.1 m CD. Whether in berth pocket Concessioning Authority shall provide dredged depth of (-) 17.1 m CD?	alongside of the berth areas if necessary guarantee is provided by the Concessionaire for use of additional draft, but is not obligated to do so
29	Chapter – 4 Annexure – 4.2 PFR Pg no. 60 to 62	Technical specification has been provided for the RMQC and RTG cranes. Authority to please clarify that whether bidder can alter / change this parameter of these equipments without hampering the project requirement.	No. of equipments / specifications indicated in Appendix 4, 4A & 4B are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
30.	General Marine studies	Please furnish the below listed studies carried out for the proposed development. • Sub Soil investigation report for offshore and on shore location • Hydraulic modelling studies (Wave and current) • Ship manoeuvring / simulation study • EIA study done for the proposed development	Available documents are enclosed as Annexure VI
31.	Clause 2.8 Pg.no.27	The Concessioning Authority ("Authority") has warranted that the Concessionaire shall have peaceful occupation of the Project Site and Port's Assets and in the event the Concessionaire's peaceful occupation is obstructed by any claims and proceedings, the Authority shall (if called upon by the Concessionaire) defend such	DCA clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		claims and proceedings. The cost of such defence should be exclusively borne by the Authority. However, this Article is not clear on the aspect of bearing of such legal expenses and should be amended to provide that the Authority shall bear the cost of defending such claims and proceeding at its sole cost and expense.	
32.	Clause 3.1(a) 3.2 3.5 3.6 Pg.no.29	Article 3.1(a) of the DCA sets forth the conditions precedent ("CPs") to be satisfied by the Concessionaire, Article 3.5 sets out the liquidated damages payable by the Concessionaire of it fails to achieve the CPs *which are within the power of the Concessionaire.* Therefore, for the purposes of levy of liquidated damages it appears that non fulfillments of CPs which are not within the power of the Concessionaire is treated more favorably than the non fulfillment of CPs which are within the power of the Concessionaire. It is as is the case with levy of Liquidated Damages, recommended that non fulfillment of CPs which are not within the power of the Concessionaire should be treated differently also in relation to Article 3.6 and before the Authority exercises its discretion to terminate the DCA, it should engage with the Concessionaire and agree on a reasonable extension. With respect to extension of time provided by the Authority under Article 3.3, there also has to the day to day extension of the time limit for achieving the CPs. Further the 90 day time limit provided for completion of all Cs is too short (Eg. Achieving financial closure and obtaining permits may take time) and the limit should be increased to atleast 180 days. Additionally the DCA should also provide for liquidated damages if	DCA clauses shall prevail.

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		the delay in achievement of the CPs is solely attributable to a delay or default of the Authority.	
33.	Clause 5.7(e) Pg.no.44	Article 5.7(e) of the DCA provided that is the Construction Works are not completed due to (a) force majeure or (b) reasons solely attributable to the Authority, the Authority may reduce the scope of the Project. However, the said Article further provided that in case of such reduction of scope, the Concessionaire will have to pay 80% of the sum saved due to such reduction of scope to the Authority. The rationale behind sharing of savings on construction works with the Authority is not clear typically because (a) the reduction of scope of the Project is due to reasons not attributable to the Concessionaire; and (b) other than payment of license fee and royalty (which is linked to the revenues of the Concessionaire) there are no other regular payment obligations on the Concessionaire under the DCA. It is therefore recommended that this Article should be deleted.	DCA clauses shall prevail.
34.	Clause 6.8 Pg.no.45	Article 6.8 deals with change of scope of the Project. If the Concessionaire receives notice from the Authority for change of scope, the Concessionaire is required to provide (a) details of the adverse impact of such change on the Project and (b) the estimate of cost to be incurred. It is recommended that the Concessionaire should also suggest the estimated time of carrying out of such change of scope and the Authority should upfront agree on such timelines and if need to be consider an extension to the Concession Period. If pursuant to Article 6.8(g), competitive bids are carried out for change of scope, the assets so created by such bidders should form	DCA clauses shall prevail.

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Annexure-I

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		part of the concession. Further, such new contractors should have the obligation to perform their scope of work in a manner that it does not disturb the performance of the Concessionaires work.	
35.	Clause 6.9 Pg.no.48	In relation to the achievement of COD, if the Concessionaire fails to achieve any relevant milestones but achieves the COD within the overall time frame, then no liquidated damages should be payable. Further, the liquidated damages for the failure to achieve the COD should be payable only after the scheduled commercial operation date.	DCA clauses shall prevail.
36	Clause 7.1(a) (i) (h) Pg.no.55	As per Article 7.1 (a) (i) (h) , except for the priority and preferential berthing authorized in accordance with the statutory guidelines, the Project facilities and Services have to be offered on a first come first serve basis. We understand that typically in relation to container cargo, it is difficult to service container vessels on a first come-first serve basis and that such cargo will have to serviced through the windows that will be provided to the shipping lines. In light of this a suitable amendment to the Article should be suggested.	DCA clauses shall prevail.
37	Clause 9.1 Pg.no.61	Article 9.1(a) of the SCA sets out the license fee payable by the Concessionaire to the Authority as the license of the Project site and the equipments comprised in the Ports Assets. As per this article, the license fee is subject to escalation as notified by the Company from time to time. For the purpose of clarity, it is recommended that Article 9.1 (a) should upfront provide for the rate of escalation, the effective date and intervals at which the license fee shall be escalated.	The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of **Rs.2,88,35,000/- (Rupees, Two Crores eighty eight lakhs thirty five thousand only per annum)** worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (as specified in the bid documents)

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			(the "License Fee"). Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession.
38.	Clause 13.1 Pg.no.81	Article 13.1 defines Change in Law in the context of adoption, reinterpretation, modification or repeal of any statute, rule, ordinance, order, treaty, directive, policy, etc by a Government Authority. It also includes imposition of any material condition by a Government Authority in connection with the issuance, renewal or modification of any applicable permits. The term Government Authority does not include the courts and therefore, any judgments or orders which re-interpret the applicable law or deals with the constitutionally or otherwise of provisions of any applicable law does not amount to a change in law for the purposes of the DCA. It is therefore recommended that such judgments/orders of courts which have Material Adverse Effect should also be construed to be change in law and the provisions of Article 13.2 (Concessionaire's Remedy) should be made applicable to such change in law. On a related note, Article 14.3 (a) which constitutes Change in Law (which is not remedied in accordance with Article 13.2) as a political force majeure event, should be deleted.	DCA clauses shall prevail.
39.	Clause 14 Pg.no.85	Article 14.3 of the DCA sets out the political force majeure events, one of which is early determination of the concession agreement by the Authority for reasons of national emergency, national security or public interest. In the event the concession agreement is terminated by the Authority on the aforesaid grounds, the provisions of Article 16 (Termination of the Concession) and 17 (Compensation) shall	DCA clauses shall prevail.

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		automatically become applicable and such determination shall no longer be a force majeure event. Therefore, Article 14.3 (e) may be deleted. If a force majeure is likely to continue beyond 120 days, the parties may mutually decide to terminate the agreement or choose to continue with the agreement on such revised terms as may be mutually agreed. The time period of 120 days is too short and should be increased to atleast 180 days.	
40.	Clause 15.3 & 15.4 Pg no.95	As per Article 15.3 of the DCA, in case of occurrence of an event of default, the non-defaulting party is required to issue a notice to the other party proposing consultation amongst the parties and the lenders for exploring possible measures of curing such default. As per Article 15.4, the consultation process is required to be carried on for a period not exceeding 90 days. However, in case of Concessionaire event of Default, the Authority shall in consultation with the lenders endeavour to arrive at an agreement on appropriate measures to cure the defect, which include among others change in management or control / ownership of the Concessionaire or replacement of the Concessionaire by a new operator. Article 15.4 does not allow any cure period to the Concessionaire for remedying the default and directly provides for a consultation process among the parties and the lenders which may even lead to change in management / control / ownership / substitution of the Concessionaire. It is therefore recommended that prior to the initiation of the Remedial Period and consultation with the lenders pursuant to the	DCA clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		provisions of Article 15.4, the Concessionaire should be allowed a period of [at least 60 days] to cure the default. The Remedial Period should commence only if the Concessionaire fails to remedy the default within such agreed cure period.	
41.	Appointment of expert	The expert should be appointed by the Parties by mutual consent, typically in relation to appointment for change in scope of work or calculation of book value for termination payments.	DCA clauses shall prevail
42.	General Queries	Does the concessionaire have any option to propose a more efficient and safer operational mode than what is proposed? If operator accept/adopt the operational mode as defined in RFP documents, is there any flexibility that operator can adjust the specification of equipment and the numbers of equipment within the bounds of the required performance indicators?	No. of equipments / specifications indicated in Appendix 4, 4A & 4B are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
43.	General Queries	The 730m quay length will restrict the berthing of 2 mainline vessels of over 8,500 TEU. Will this not be a restriction in serving the future needs of the target market?	The Quay length of 730m can accommodate different categories of container vessels and the Concessionaire to optimize the usage of 730m of Quay length according to the requirement and ship characteristics
44.	General Queries	The future development of 2nd container terminal in Ennore will have a longer quay line and higher capacity. As per Indian law, can a selected bidder of 1st container terminal can participate in bidding process of 2nd terminal?	Participation of the selected bidder in the bidding process of second terminal depends on the Government policy at the time of bidding for second container terminal

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at Ennore Port

Annexure-1

Slno.	Clause Reference	Query of the Applicant	Response by EPL
45.	General Queries	The future development of 2nd container terminal in Ennore will have a longer quay line and higher capacity. As per Indian law, can a selected bidder of 1st container terminal can participate in bidding process of 2nd terminal? There is no detail statement about when the 2nd terminal will be developed, and we worry about early development creating an over capacity in the market. Please provide details of timing of the 2nd terminal.	Cannot be envisaged at this stage. In this connection refer clause 12.3.3 (c) of Draft Concession Agreement.
46.	General Queries	How much flexibility is left to the concessionaire to design their own operating methodology as we may not wish to operate the terminal with RTGs and trailers as per the design approach suggested/defined by the documents? As we do not have container volume, split or dwell times, it will not be appropriate to fix an operating mode this early.	No. of equipments / specifications indicated in Appendix 4, are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
47.	General Queries	The KPIs stipulated throughout the document are very old and not consistent with the operating efficiency standards of the most global operators e g. a. Separation of 100m for STS cranes, depending on the target vessel call market may constrain the crane split offered to meet customer demands. b. Therefore 7 cranes may not be enough; c. The document stipulates a ratio of RTGs to STS cranes which is again not consistent with global benchmarks. Are these KPIs fixed or flexible?	The Performance standards indicated in Appendix-15 are as per the Government Guidelines. The number of equipments indicated is the basic minimum. The Concessionaire at his own option may provide more number of equipments with higher specifications / capacity strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments.
48.	General Queries	The specification of the berth structure uses a PS class vessel as the design criteria (actually quotes the "Emma Maersk") However, it is	No. of equipments / specifications indicated in Appendix 4, are the basic minimum

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		also defined that the crane sizes are 4 post-panamax, with specifications and 3 panamax, also with specification. We think these cranes are not suitable for servicing the design vessel - hence what is the scope for the change and can we not restrict the bert with different size cranes?	which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments Refer the amended DCA for Appendix 4
49.	General Queries	The specification of the RTGs is not as per the global standards nor as per the current designs of the majority of crane vendors. Can EPL change the crane specifications?	The specifications given in the Feasibility Report are indicative / preliminary reference only. The Concessionaire is free to provide similar / higher capacity equipments strictly adhering to the codal provisions. (Refer clause 2.1.3 of RFP)
50.	General Queries	Is the 1.4 million TEU throughput capacity projection derived from a bottle neck study of yard, gate, cranes, etc. or is it simply based on a bench marking exercise across other ports in India?	It is worked out as per the Government of India Guidelines.
51	General Queries	Can you incorporate some flexibility in the type/number of equipments, at least in regard to RTGS/RSs/Trucks, etc if not for QCs as long as we commit to the min guaranteed throughput requirements	No. of equipments / specifications indicated in Appendix 4, are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
52.	General Queries	Can the terminal operator out-source (sub-let) certain activities of operation? Eg: O&M of Trucking, RTGs, QCs? Does the terminal	No.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		operator have to own all these equipments? Is the terminal operator is allowed to have long term leasing contract even for Reach Stackers with some local equipment provider as this is not clearly specified in the document?	No. of equipments / specifications indicated in Appendix 4, are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
53	General Queries	Can the terminal operator substitute Reach Stackers to Empty handlers/Top loaders to cater to the changing dynamics of the market around?	Number of equipments / specifications indicated in Appendix 4, are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the codal provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4
54.	General Queries	Are there any plans in place for improving the rail/road connectivity to support the terminal development - if yes, could you please provide project details in terms of timelines, any contracts awarded, or plans to award the same, etc. to be undertaken by EPL	**Rail Connectivity** A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine

Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			escape lines. It is further note that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc. are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates **Road Connectivity** EPL plans to develop 2 lane road connectivity parallel to the proposed container terminal connecting the existing roads leads to main gate and west gate The road construction work will be in

Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
			synchronization with the operation of the terminal.
55.	General Queries	Could you please provide the details of the plan for capital dredging in terms of the commencement date, timelines and the expected draft (depth) at the berths.	Refer relevant clauses in Appendix 2 of amended Draft Concession Agreement.
56.	General Queries	The terminal is expected to be commissioned in 42 months from date of award in case of single phased development as per RFP however, as per CA it has been suggested that royalty payments will begin after 36 months from date of award -Can the timelines be aligned with date of commissioning for the royalty payments?	Refer amended DCA.
57.	General Queries	Same discrepancy is applicable to two phased development wherein the royalty payments will begin from 24th month while expected completion of phase 1 construction is 27 months from date of award - Request you to please align the royalty payments dates with completion of construction of phase 1	Refer amended DCA.
58.	General Queries	As per CA, two types of payments that a concessionaire is supposed to make are - license fee and royalty payments. In case of phased approach chosen by the operator, will the license fee be accordingly prorated?	For phase wise development, the license fee will be charged on pro rata basis as per prevailing Scale of Rates of EPL. For payment of Royalty, DCA clauses shall prevail.
59.	General Queries	During the construction period, operator is required to maintain a performance guarantee which is supposed to continue until stipulated construction period. Since, there are some discrepancies associated with the commissioning of the terminal, please confirm the timing and duration	DCA clauses at 4.1 and 4.2 of Article 4 shall prevail
60.	General Queries	In case the selected bidder proposes a better design and operation mode, will the authority be open to it? In addition, we believe that	The specifications given in the Feasibility Report are indicative / preliminary

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
		the proposed RTG operation is considering a standard diesel RTG, will the authority be open to electric RTGs?	reference only. The Concessionaire is free to provide similar / higher capacity equipments strictly adhering to the codal provisions. (Refer clause 2.1.3 of RFP)
61.	General Queries	As per the RFP, the rates for various operations shall not exceed those prescribed by EPL or any competent authority. Please confirm will TAMP 2013 be the governing guideline and if not, how will the reference tariffs issued by EPL be decided	Refer Appendix 12 in amended DCA.
62.	RFP Pg.10	Page 10 of 66 lists the scope and timeline. If we develop in 1 single phase the Terminal is to be commissioned for operation in 42 months from the date of award of Concession. The draft Concession Agreement document however in Article 6.3.1 has 36 months. This same 36 months from Date of Award is mentioned as Milestone date in Appendix 5 (to the Concession Agreement). Can we assume that the 42 months in the RFP document is correct or please provide for the discrepancy.	Refer amended DCA.
63.	Pg.14	The Bid due date is still open. Is there any specific reason or are there any pending permits/approvals or any other obstructions?	Bid due date is as 10.2.2016.
64.		Can you please provide the name of the consultant who estimated the project cost?	Consortium of Capital Fortunes Pvt Limited, Hyderabad and Portman India Private Limited, Chennai
65.	1.2.3	RFP and any addenda issued subsequent to the RFP will be deemed to be a part of the Bidding document. Will the replies of queries from EPL be also considered as part of the RFP?	Yes
66.	2.1.9	Can an applicant company appoint 2 people independently 'Attorney' for the signing of the bid? If so, it has to be only one Power of Attorney with 2 names, or there should be 2 Power of Attorney separately?	Yes
67.	2.1.4 v	If an applicant company 'A' hires a cost consultant company 'X', can	RFP Clause 2.1.14 be referred

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
		an another applicant company 'B' also use the same cost consultant, assuming that two consulting teams are separate and maintain a firewall approach.	
68.	2.20.7	If reasons, what action will the authority take? Will a selected bidder does not sign the concession agreement for whatever such a bidder be allowed to bid again?	(i) Refer Clause 2.20.7 of RFP (ii) No
69.	Page 47, Clause 6	If a selected bidder does not sign the concession agreement for whatever reason, will that bidder be consider as a 'failed to perform"?	Yes
70.	Page 48, Clause 11	Is clause 11 is applicable for associate companies in India or worldwide, as large conglomerate companies may have business in many countries and hence, it will be difficult to certify this for associates spread worldwide?	Para 11 of Appendix I of RFP is applicable globally
71.	Page 48, Clause 13	Is clause 13 is applicable for associate companies CEO, Director, Manager, employees in India or worldwide? Large conglomerate companies may have business in many countries and hence, it will be difficult to certify this for associates spread worldwide.	Para 13 of Appendix I of RFP is applicable globally
72.	1.2.8	As per Clause 1.2.8, the Concessionaire shall be entitled to levy and charge a pre-determined user fee from the users of the Project. The RFP does not provide any details on how this user fee will be determined. Request EPL is to clarify the same.	Refer Appendix 12 on amended DCA
73.	1.3	Schedule of Bidding Process - The exact date (i) by when the authority is to respond to queries (ii) of the bid due date and (iii) of opening of bids is not mentioned in clause 1.3. Request EPL to provide definite timelines.	Bid due date is on 10.2.2014.
74	2.1.14	General Terms of Bidding - Clause 2.1.14A sets out the circumstances	RFP clause 2.1.14 shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		in which the bidder is considered to have a conflict of interest viz. if the bidder, its member or associate and any other bidder, its member or any associate thereof have common controlling shareholders or ownership interest. Clause 2.14A also provides that such disqualification shall not apply to any ownership by a bank, insurance company, pension fund or public financial institution referred to in Section 4A of the Companies Act, 1956. Section 4A of the Companies Act, 1956 has been repealed w.e.f 12th September 2013 and has been replaced with Section 2(72) of the Companies Act, 2013. Request EPL to clarify that for the purpose of Clause 2.14A public financial institution would therefore have the meaning set forth in Section 2 (72) of the Companies Act 2013?	
75.	2.1.18 (v)	As per this clause if the selected bidder has proposed a management contractor, he will be required to formalize the tie up with one of the management contractors through a legally binding agreement and submit the same to the Authority not later than 4 weeks from the date of issue of the LOA. Request EPL to clarify whether the management contract is required to be in a specific format?	Shall be provided to the successful bidder at appropriate time
76.	Page 17 Concession Agreement	Project site refers to description in Appendix 1. Can you please provide a clear drawing as it would really help to clarify the text and define the areas?	Drawings are enclosed as Annexure III (pdf)
77.	Page 57	Would it be possible to add the word "minimum" for further clarification to the clause c.(i).(b) maintenance of the entrance channel at minimum depth of (-) 17 m CD and similarly for (d) depth alongside the berth at minimum (-) 16 m CD.	DCA clauses shall prevail (Clause 7.1 (c) i(b) & i(d)).
78.	Page 57	Can you please provide the maintained minimum depth of the harbor basin as the entrance channel depth is defined and the depth alongside the berth (not the inner harbor channel and turning basin)?	Please refer relevant details in Appendix 2.

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
79.	Page 121, Appendix I	Please provide clear (AutoCAD) drawing detailing the specified areas, dimensions, limits, roads, etcetera.	Drawings are enclosed as Annexure IV (Auto cad)
80.	Page 156	The 12 months (in case of one phased project) milestone for 25% of civil work to be completed is far from realistic. A proper design period followed by tendering and thereafter mobilization and start up can easily take 8-10 months. Suggest deleting this milestone or is it possible adjust to 18 months?	Refer amended DCA
81.	Page 157	The 10 months (in case of a 2 phased project) milestone for 25% of civil work to be completed is far from realistic. A proper design period followed by tendering and thereafter mobilization and startup can easily take 8-10 months. Suggest to delete this milestone or adjust to 18 months. Similarly, please suggest a similar request for the 40% milestone.	Refer amended DCA
82.	Pg 156/157	As for the above mentioned milestones, refer to chapter VIII of the Feasibility report as well, where it is stipulated that first 6 months after signing Concession Agreement will be used for getting DPR approved. Hence construction to start only after 12 to 14 months.	DCA clauses shall prevail
83.	Pg158, Appendix 6	The Guidelines for design uses 14,500 TEU vessels. We assume that is potential future use, since the water depth provided and to be maintained by the Concessioning Authority will be sufficient to cater for smaller vessels with 14.5 to 15.0 m laden draft.	The berth to be designed to facilitate berthing of 14,500 TEU vessels. Refer Appendix-6 of DCA
84.	Pg165, Clearance, article 2.1	Please provide us a copy of the Environmental Clearance for guidance.	Will be provided to the successful bidder at appropriate time
85.	8.1(a) read with Appendix 12	Scale of Rates means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by the Concessioning Authority. However, The Scale of Rates is not specified in the Appendix. Could you please provide further clarification?	Refer Appendix 12 & Appendix 13 in the amended DCA.

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
86.	8.1(a) read with Appendix 12	The Concessionaire is entitled to recover Tariff from the users as per the Tariff Notification, an extract of which is set out in Appendix 12. Appendix 12 does not set out the extract of the Tariff notification. Request EPL to provide the same.	Refer Appendix 12 & Appendix 13 in the amended DCA.
87.		Further, Appendix 12 does not provide for the manner in which the Tariff is to be revised. Request you to please advise on the same.	Refer Appendix 12 & Appendix 13 in the amended DCA
88.		This clause provides that the Tariffs shall be revised in the manner set out in Appendix 12 and duly notified by the 'Company'. The term Company is not defined in the Concession Agreement. Request EPL to clarify reference to the term Company.	Refer amended DCA.
89	2.8	Clause 2.8 inter alia provides that the Concessioning Authority shall defend claims and proceedings initiated by any person claiming to have a charge on the Project Site and Port's Assets or any part thereof. In other concession agreements, the Concessioning Authority has also provided for an indemnity pursuant to which the Concessioning Authority would indemnify the Concessionaire against any loss/damage which the Concessionaire may suffer on account of any person claiming a right, title or interest on the Project Site and Port's Assets. Hence, would the Concession Authority provide for any such indemnification?	DCA clauses shall prevail
90.	3.4	This clause provides for payment of liquidated damages by the Concessioning Authority in the event they fail to fulfill the condition precedent under Article 3.1. (b). Can we request EPL to incorporate a provision in this clause that such liquidated damages represent a genuine pre-estimate of the damages likely to be incurred by the Concessionaire and is not by way of penalty, as has been done in other clauses of the Concession Agreement viz. clause 6.9 etc.	DCA clauses shall prevail
91.	5.1 c	This clause provides that the costs and expenses of the independent engineer shall be borne by the Concessioning Authority and the Concessionaire equally. In some concession agreements we have	DCA clauses shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		seen that the costs and expenses of the independent engineer are to be borne by the Concessioning Authority. Can this be reconsidered?	
92.	6.3	In the event the Concessionaire chooses to complete the Project in two phases, this clause provides that the Concessionaire shall commence and complete construction of Phase 2 within a period of 51 months of obtaining the Interim Completion Certificate. This clause is inconsistent with clause 1.1.3 of the RFP which provides that the Phase 2 development shall be commenced on or before the 51st month from the Date of Award of Concession and that the maximum period of completing the Phase 2 development shall be 21 months. Request EPL to provide a clarification in this regard.	Refer amended DCA
93.	6.5 c	This clause provides that the Concessioning Authority shall publish notifications in the official gazette and declare the project facilities and services as ready for operation in accordance with the provisions of the 'Company' or such other provisions as applicable. The term Company is not defined in the Concession Agreement. Request EPL to confirm whether the reference should be to Section 37 of the MPT Act.	Definition of "Company" is included in amended DCA
94.	7.1 a (xiii)	This Indemnity clause refers to provisions of the 'Company' or any other law for the time being in force. The term Company is not defined in the Concession Agreement. Request EPL to clarify the reference to Company.	Definition of "Company" is included in amended DCA.
95.	7.1 c (i) b & d	This clauses provide for the Concessioning Authority to inter alia (b) and (d) provide for maintenance of entrance channel depth and dredged depth alongside the berth. In other concession agreements we have seen that separate figures are provided for the periods October - May and June - September. Please consider whether this may be relevant.	DCA clauses shall prevail
96.	9.1 a	This clause provides for escalation of the license fee as notified by	Refer Appendix - 13 in amended DCA.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		the Company from time to time. Further, the clause provides that the license fee is to be paid in monthly installments. The term Company is not defined in the Concession Agreement. Request EPL to clarify the reference to Company.	Definition of "Company" is included in amended DCA.
97.		Further, the clause does not specify any particular date on or prior to which the license fee is to be paid each month. The same may be clarified with EPL.	Refer amended DCA.
98.	12.1 d	This clause deals with indemnity to be provided by the Concessionaire. In other concession agreements we have seen a specific clause which provides that neither party shall be liable to the other for any consequential, indirect, incidental, punitive and exemplary losses and damages. Can you please advise?	DCA clauses shall prevail
99.	12.1 g (ii)	This clause provides for issuance of guarantee by the Concessionaire 2 years prior to the expiry of the Concession Period. This clause does not provide for the validity period of the guarantee and when the guarantee is to be released. Request EPL to clarify the same	To be valid for 1 year from the Date of expiry of concession period
100	12.2 h	This clause provides that any increase of taxes in respect of the Port's Assets shall be met and paid by the Concessioning Authority. In some other concession agreements we have seen that in addition to such clause, the Concessioning authority also agrees to keep the Concessionaire indemnified against any such increase in taxes etc. Is there any such provision?	DCA clauses shall prevail
101.	12.3 (iii)	This clause deals with confidentiality and provides that disclosure of confidential information is permitted only to legal advisors/auditors of a concerned party and as required by law. In other concession agreements we have seen that disclosure of confidential information	DCA clauses shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		is also permitted to (i) lenders and their representatives (ii) insurers and (iii) directors and officers of the concerned party. Is there any such provision?	
102.	14.4 c	This clause provides that any civil commotion, boycott or political agitation which prevents collection of the Fee by the Concessionaire shall constitute a Force Majeure Event. The term Fee is not defined in the Concession Agreement. Request EPL to clarify reference to the term Fee.	Fee refers to the applicable tariff
103.	Clause 4.1 read with Appendix 9	Clause 4.1 provides that the Performance Guarantee shall be valid until expiry of 6 months from the date of commercial operations. Clause 4.1 and Appendix 9 are inconsistent. Request EPL to clarify the validity period of the Performance Guarantee	Refer 4.1 of Bank Guarantee and Para 5 of Appendix 9 of DCA which are self explanatory
104.		On the other hand paragraph 5 of Appendix 9 provides that the performance guarantee shall remain in force until the scheduled Project completion date and for a period of 12 months thereafter	
105.	Feasibility Report Pg.8, Fig 2.1	Please provide us the original drawing for reference; not all is clear from this figure	Drawings are enclosed as Annexure III (pdf)
106.	Pg.39 to 41 4.7.1	May we assume that the container berth layout is just an indicative or typical design, where the Concessionaire is responsible for his own berth design and execution method?	It is only the typical layout Bidder can design as per the requirement
107.	Pg.63	Is the access road a 2 lane road, being 1 lane in each direction or is this 2 x 2 lane road"	The existing port access road has a total width of about 10m carriage way.
108.	Pg 64	A drawing / plan with the locations of these roads will help	The drawings showing the alignments are not available.
109.	Pg.66	This section on rail connectivity is not entirely clear. Can you please provide a drawing with the existing and planned railway tracks.	Will be provided to the successful bidder at appropriate time
110.	Pg.84, Chapter VIII	A period of 6 months is required after signing the Concession Agreement to get Detailed Project Report (DPR) prepared and approved. Detailed design, Engineering and construction tendering	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		can start after this 6 months period. Is that a correct understanding?	of RFP. Also refer article 2 of DCA.
111	Pg.24	Given the current and future GDP forecasts for India by large institutions and banks worldwide, how does a 8.5% GDP growth for a nominal scenario justify for traffic projections for India?	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
112	Pg.25	What is the basis for a 20% market share assumed in the nominal scenario for traffic projections for Southern ports of the overall India traffic projections?	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
113	Pg.27	Could you please provide details of the market share assumption for the Chennai - Ennore cluster taken at 75% of the overall Southern Port traffic? As we think this stand on the aggressive side given other ports like Krishnapatnam, Tuticorin and Kattupalli	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
114	Pg.22, para 3.4.2.1	How much is structural relationship between GDP and container growth CAGR is assumed?	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
115	Pg.24, para 3.4.4	As per projected India container traffic from 2013-2018, the CAGR is over 15.6, which looks extremely high. We request to provide supporting full report from your consultants, justifying such abnormal growth forecasts.	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
116	Pg.26, Table-3.7 A	Kattupalli port is 1.4 mil TEU, while the table shows only 1.0. Please provide the reasons for this assumptions	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
117	Pg.63, Para 5.3	Various road connectivity timeline suggested looks very much outdated. Please provide latest information on completion of these projects	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP

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Annexure-1

Sino.	Clause Reference	Query of the Applicant	Response by EPL
118	Pg.66, Para 5.3.3	When rail connectivity completed, please suggest how many trains per day container terminal will be able to send / receive? As per latest information, the single line rail is very busy for handling cargo for other Ennore terminals and there is hardly any spare capacity left for the Ennore container terminal.	25% of Container traffic movement by rail has been assumed
119		Is operator required to any dredging activity?	Capital and Maintenance dredging from the berth face by EPL. However, removal of any obstruction / foreign material in the alongside berth area will be the responsibility of the concessionaire at his cost & risk
120	Pg.73, Para 7.4	Handling rate assumed as 2910 per TEU. Please provide the basis of this assumption.	Refer Appendix 12 in the amended DCA.
121	Pg.76, Annexure-7.1	Revenue and Cash flow are taken from year 4, and it is assumed that the container terminal will be ready in 36 months, which is not as per the timeline stated in RFP document.	For the purpose of calculating IRR etc., the revenue and cash flows are taken in DFR from 4th year onwards considering single phase option. The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
122	Pg.76, Annexure-7.1	Capex is considered only in year 1-3. However, many equipments life Annexure will be between 5-15 years and they need to be renewed at the end of their life. Pls provide the reasons of not accounting for the additional required Capex.	Capex and phasing thereof are assumptions in the DFR. The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP
123		Currently, Kattupalli container terminal does not have any significant traffic. Keeping same in mind, why do you think Ennore container terminal can have a 20% market share?	The details provided in the DFR are indicative only. The bidder has to make his own study / assessment. Refer clause 2.1.3 of RFP

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
124		Could you please provide the details of the consultant who has undertaken the study for the preparation of the feasibility report.	Consortium of Capital Fortunes Pvt Limited, Hyderabad and Portman India Private Limited, Chennai.
125		As per the 4.7.2 clause in the feasibility report, develop a rail connectivity - what is the timeline for the same?	**Rail Connectivity:-** A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the termina. The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc. are the scope of the terminal operator and EPL will provide the required land for such

Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
			developments as per prevailing Scale of Rates.
126.	General	In the Traffic assessment for Ennore Port, capacity and expected traffic at Cochin Port (Rajiv Gandhi Container Terminal and Vallarpadam) has not been taken into account. It is important to consider this as Cochin Port would also share the hinterland of the Southern Ports	Traffic assessment for the project in the DFR is indicative only. The bidder has to make his own study/assessment. Refer clause 2.1.3. of the RFP.
127.	DCA clause 6.3	The specified time period of 27 months for Phase I is too short and not sufficient to complete the project. It should be enhanced to atleast 36 months	DCA clauses shall prevail
128.	DCA clause 6.3	Implementation of Phase II should be entirely dependent upon achieving throughput of 0.60 mn TEUs, and not based on any specific time. The condition that construction of Phase II works shall commence within 51 months from the Date of Award of Concession shall be dispensed with, and no time limit for the same shall be specified. Commencement of work on Phase II shall be entirely based on achieving a threshold throughput	DCA clauses shall prevail
129.	DCA clause 8.1	It is mentioned in the Draft Concession Agreement (Clause 8.1) that the Tariff will be notified by Ennore Port Ltd. (EPL), and the Concessionaire cannot charge tariff higher than the tariff notified by EPL. This provision is the same as in case of other ports where TAMP determines and regulates the tariff. As TAMP is not applicable in case of Ennore Port, it is requested that the Concessionaire be allowed to determine and notify tariff on his own based on market forces, and without the requirement of any approval from EPL or any other authority	Refer Appendix -2 in the amended DCA which permits freedom to the concessionaire to fix the Tariff subject to conditions specified therein.
130.	RFP-Clause No. 1.3 - Tender submission date	Please allow bid submission within 2 months from receipt of pre-bid clarifications	Bid Submission Date : 10.02.2014.

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Sl.no.	Clause Reference (Bid due date)	Query of the Applicant	Response by ETL
131.	DCA-Article 1, Definitions - "Supporting Project Infrastructure" means (e) rail connections between hinterland and port	Please modify it as "Supporting Project Infrastructure" means (e) rail connections between hinterland and port till the Project area.	DCA clauses shall prevail.
132.	Project Phasing - It is mentioned that concessionaire can opt for single irrevocable option of phasing the project in 2 phases	Please elaborate, at which stage, such options can be exercised and what flexibility would the Concessionaire enjoy in case he opts or not-opts for phasing.	Refer amended DCA
133.	RFP-Clause 1.2.4/2.1.7 - Bid Security shall be 2% of Total Project cost	As per general practice for PPP/DBFOT projects, the bid security is 1% of TPC . The Bid security may please be reduced to 1% of TPC	RFP clauses shall prevail
134.	RFP-Clause 2.1.9 - Joint Bidding Agreement	While as per 2.1.9 JBA has to be submitted but whereas in 2.11.2 Enclosures JBA is not mentioned. Please confirm if JBA has to be submitted or not.	Clause 2.1.9 refers only to the Power of Attorney.
135.	DCA-Clause 1.3 The Concession Agreement shall be signed within 30 days of LOA	General practice for PPP/DBFOT projects is 45 Days. The signing time may please be increased to 45 Days.	DCA clauses shall prevail.
136.	DCA-Article 4, Performance Guarantee - Performance Guarantee of Rs. 63.50 Crores is required to be	General practice for PPP/DBFOT projects , Performance Security shall be released within one year from the Appointed date or 20% of Total project Cost being expended, whichever is earlier . This may please be Considered	DCA clauses shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
	submitted by bidder.	Further, in case bidder opts for phasing of project the Performance Guarantee can proportionately be divided into two tranches on the basis of phase-wise project cost.	
137.	DCA-Article 6 and RFP- Clause no 1.1.3 - As per Clause 6.3.1 Independent Engineer's certificate should be obtained not later than 36 Months from the date of commencement of Concession Period. However as per Clause no. 1.1.3 of RFP timeline of 42 months is provided for completion of project in one-go.	Since 42 months is allowed (as per RFP) for construction (in case bidder doesn't opts for two phases), we request you to allow correspond time for obtaining Independent Engineers certificate. Further time limit of 42 months for construction may kindly be increased to 48 months.	Refer amended RFP and DCA
138.	DCA-Article 6.3.2 and RFP- Clause no 1.1.3 - 27 months is allowed for completion of Phase I	It is requested to change it to 36 months as suggested in feasibility report.	Refer amended RFP / DCA
139.	DCS Article 6.9 - Liquidation Damages	Given the quantum of project cost, requesting you to kindly change the rate of 0.10% for every day of delay to 0.10% for every week of delay.	DCA clauses shall prevail.
140.	DCA-Article 6 Clause 6.4(i)	Please clarify why no-objection condition to handle container vessels less than 40 containers per vessel is sought by the Authority.	DCA and RFP clauses shall prevail.
141.	DCA-Article 9 Clause 9.2 (d)	Since Article 6.9 of DCA levies Liquidation Damages on delay, royalty should be payable only on commencement of Project Facilities and Services only. Else, in case of delay the	DCA clauses shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		Concessionaire will be double penalized, one by way of Liquidation Damages and another by way of deemed Royalty. Hence, it is requested that the condition of 36 months from the Date of Award of Concession may kindly be removed.	
142	DCA-Article 13 - Clause 13 – Change in Law	In case of Change in Law, the Concessionaire shall be compensated only the amount exceeding Rs. 88.95 Crores in an accounting Year while the authority shall be compensated by the Concessionaire for any sum above Rs. 6.85 Crores. It is requested that this clause may please be modified to reflect that the concessionaire shall be compensated for any amounts over Rs. 6.85 Crores	DCA clauses shall prevail.
143	DCA-Article 17 - 17.1(b) and 7.1(c)	Compensation clauses for termination due to Concessioning Authority event of default may be higher of: 1. Aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity 2. The actual project cost 3. The book value	DCA clauses shall prevail.
144	DCA-Appendix 12, Chapter II - Charges for Container Operations	Please provide detailed scale of rates and methodology for tariff setting and escalations.	Refer Appendix 12 in the amended DCA
145	DCA-Appendix 14 - Minimum Guaranteed Cargo	It is suggested that Minimum Guaranteed Cargo throughput for each phase (in case bidder opts for phasing) should be stated separately and be increased in a gradual manner.	Refer amended DCA
146	RFP-Clause no. 1.1.3 and DCA- Appendix 4, 4A & 4B - Equipments required	Referring to RFP it seems that Reach Stackers and Tractors Trailers does not form part of mandatory equipments to be procured. However as per Appendix 4, 4A and 4B of DCA the same is mentioned. Please clarify	DCA clauses shall prevail. Refer amended DCA for Appendix-4

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		Further it is requested that Reach Stackers and Tractor Trailers may allowed to be procured by Concessionaire on lease basis (rather than buy basis).	No. of equipments / specifications indicated in Appendix 4, 4A & 4B are the basic minimum which are to be owned by the concessionaire. The concessionaire may provide equipments of higher capacity / specifications strictly adhering to the local provisions, to increase the productivity / efficiency of the terminal without affecting the quoted Royalty (revenue share) payments. Refer the amended DCA for Appendix-4 DCA clauses shall prevail.
		As per terms of RFP the bidder has to make his own study on traffic projections, various cost elements. Based on the available traffic and development of other terminals in near vicinity, we believe that the infrastructure and handling equipment requirement is on higher side. Hence we request that the minimum equipment required is to be as per bidders own assessment in line with the cargo throughput, subject to achievement of minimum guaranteed cargo.	
		Further phasing of investment should only be liked with capacity achievement without any reference to number of months from the date of Award.	DCA clauses shall prevail.
147.	RFP-Clause No. 1.1.4 - Estimated Project Cost	We suggest, either 1. Feedback should be obtained from qualified applicants (via two pre-bid meetings) and then the infrastructure and equipment requirement may be freezed;	RFP clauses shall prevail.
		2. Or bidder should be allowed flexibility in phasing based on	RFP clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		its own assessment.	
148	RFP-Clause 2.1.18 v - Management Contractor	It is proposed that in case the bidder proposes to appoint management contractor, he will be free to change him, modify initial contract conditions and/or appoint one or more contractor with no binding of EPL.	RFP clause 2.1.18 v deleted. Refer amended RFP and DCA clause 2.1.01
149	RFP-Clause 2.1.18 - Levy of Cess	It is mentioned that Authority may levy a cess as may deem appropriate. The bid is submitted based on assessment of tariff of the proposed terminal as well as competing facility in near vicinity. Any unplanned cess may make the terminal non- competitive & non-viable, hence may not be imposed.	Refer amended RFP. Refer Article 8.2 of DCA which is as per model concession agreement approved by Government of India. The modalities of cess if any shall be mutually discussed and decided
150	RFP-Clause 2.3.1 and DCA- Clause 11.2 - Shareholding	As per RFP the lock-in-period is 2 years while as per DCA is 3 years. Also the minimum holding, during lock-in-period, as per RFP is 26% while as per DCA is 51%.	RFP / DCA are self – explanatory
		We suggest the lock-in period of 32 years may kindly be adopted.	RFP / DCA clauses shall prevail.
151	RFP Clause 1.2.4 — Bid Security	We draw reference to the Model RFP document of the Govt. Of India which recommends a bid security of 1% of the Estimated Project Cost with an option to the Authority to increase it to 2%, if deemed necessary. We request EPL to consider a bid security of 1% of the Estimated Project Cost or INR 12.70 crores	RFP clauses shall prevail.
152	Clause 1.2.6 read together with Clause 1.3	For a project of this magnitude bidders will require to study this project in great detail and also carry out necessary studies and for which a time frame of about 120 days is to be expected. Further, clarity obtained after detailed discussions at the Pre-Bid Meeting/s and from the responses issued by EPL to bidder's queries are also needed in the process of carrying out these studies. Hence, EPL is requested fix the Bid Due Date as 90 days from the date of issue of written responses to bidder's queries following the last Pre-Bid Meeting by EPL.	Bid Submission Date : 10.02.2014.

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
153.	Clause 1.2.8	The clause states that the Concessionaire shall be entitled to charge a pre-determined user fee from users of the Project. We request you to provide the user fee/tariffs at the earliest	Refer Appendix 12 and 13 in the amended DCA.
154.	Clause 2.1.5 read together with Appendix 1	Clause 2.1.5 states that the bid amount should be in figures and words.. We understand that as per Clause 1.2.6 the Bids are invited for the Project on the basis of highest revenue share, however, in serial number 26 of Appendix I says "(Revenue share) Royalty". Please confirm the correct position and issue an amendment if required	It is Royalty (revenue share) in the form of percentage of the gross revenues of the project. Refer amended RFP.
155	Clause 2.1.18.iii	The clause states that Tariff proposed by the successful bidder will need to be approved by EPL or any other competent authority as may be prescribed by Government of India. The clause further states that the rates for the various operations shall not exceed those prescribed by EPL or any other competent authority as may be prescribed by Government of India. 1. Please clarify what does the successful bidder has to propose? 2. Please also clarify whether the successful bidder has to take approval on an yearly basis? We suggest that EPL follows a free market tariff regime. Should there be need for tariff regulation then TAMP 2013 guidelines should be followed	Clause 2.1.18 (iii) of RFP delered. Up-front tariff may please be seen in Appendix 12 in the amended DCA Appendix-12 is self explanatory
156.	Clause 2.1.18.vi	The clause states that the competent authority may levy a cess beyond the levels indicated in the Concession Agreement such that the terminal is not placed at a disadvantage vis-a-vis other terminals in Ennore Port. Since we are competing with terminals in the Chennai region, "Ennore Port" should be replaced with "Chennai Region"	Clause 2.1.18 (vi) of RFP deleted. The modalities of cess if any shall be mutually discussed and decided. (refer article 8.2 of DCA)
157.	Clause 2.1.18.vi	The clause also states that 100% of the cess collected has to be passed on to the Authority. We understand that revenue share is not	Clause 2.1.18 (vi) of RFP deleted.

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Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		payable on the cess. Please confirm.	The modalities of cess if any shall be mutually discussed and decided. (refer article 8.2 of DCA)
158	Clause 2.1.15	EPL may please advice the names of the legal, financial and technical advisors engaged in relation to this project. From the reading of this Clause it seems that thebidder/concessionaire cannot appoint the legal, financial and technical advisors to EPL either prior to the award of the concession and also for the entire term of the concession. Kindly clarify the correct intention of EPL in respect of this Clause.	Consortium of Capital Partners Pvt Limited, Hyderabad and Portman India Private Limited, Chennai are the Project Advisors of this project.
159	Clause 2.2.1	The provisions of this Clause permit a change in the composition of a consortium subject to approval from EPL. Confirmation is requested from EPL that the single applicant (who has been shortlisted at the RFQ stage) is during the Financial Bid stage also permitted to create a 'consortium' by bringing in a suitable partner/s	RFP clauses shall prevail.
160	Clause 2.5.1	We request EPL to arrange a site visit as it is important in order to see not only the exact locations of the new berths but also to clearly understand the proposed alignments of the existing and proposed road and rail connectivity.	Visits already arranged. If required further visits could be arranged.
161		EPL is also requested to provide all data available with them from studies conducted in respect of weather, soil test reports, bathymetry, hydraulic studies etc	Available documents are enclosed as Annexure -III.
162	Clause 2.12	It is envisaged that the Bids should be submitted before 1100 IST on the Bid Due Date. We request to change the time to 1500 IST from 1100 IST to ensure that the Bidders can de-risk the traffic conditions from Chennai Airport to Ennore Port Corporate Office and any unforeseen flight cancellations/ delays	The Bid submission date is on or before 1500 IST on 10.02.2014.
163	Clause 2.20.4	The 3rd line of the paragraph says the Bid Security will be refunded 'aspromptly as possible' — this is in conflict with the provisions of clauses 2.1.8 and 2.2.4.	All the three clauses in RFP i.e. 2.2.4, 2.1.8 and 2.20.4 do not have any contrad ction

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Annexure-I

Slno.	Clause Reference	Query of the Applicant	Response by EPL
		Please confirm that the Bid Security will be refunded as per Clauses 2.1.8 and 1.2.4	
164	Clause 3.1.1	We request to change the Bid opening time to 1530 IST. Refer our query number 12 above	Opening date and time will be intimated in due course
165	Appendix I - Paragraph 1	Please advise what 'date' is to be inserted in the blank space in the 1st line of the 1st paragraph	30th October 2015.
166	Appendix I - Paragraph 16	Please confirm that if the Bidder is a single entity and not a consortium this paragraph 16 is to be deleted. Alternatively, can "our Consortium was" be replaced with "We were". 2. The words "Change in Ownership" are capitalized — however phrase is not defined in the RFP or Draft Concession Agreement. Please advise what is the meaning and relevance of these words.	Clauses are as per the model RFP issued by the Government of India
167	Appendix I - Paragraph 17	it appears that the reason why this paragraph was originally inserted in the Model REP document of the Govt. of India was at that point of time the shortlisting of pre-qualified bidders was limited to the top 5 (or 6 as the case maybe) bidders ranked on the basis of their Technical Score at the RFQ stage. In arriving at Score the Bidders are permitted to use Technical and Financial Capacities of their Associates — hence any change in control of any Associate who was used, leading to a reduction in the Technical and/or Financial Capacity could have adversely affected the bidder's qualification. Since this cap on shortlisted bidders at the RFQ stage has now been removed by the Min. of Shipping the restriction regarding change in control of Associates is no longer relevant. Hence, this paragraph 17 should be deleted	Even though cap on shortlisting is removed, the shortlisting of pre-qualified bidders has to be done and hence the clause is relevant which cannot be deleted.
168	Appendix I - Paragraph 26	the word 'Royalty' seems incorrect. Kindly amend the same. Also the phrase 'and traffic' is not relevant. Please amend accordingly. Refer our query number 4	RFP clauses shall prevail

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
169.	DCA Article 1.1 Definitions	▪ 'Debt Due' — The definition of Debt Due excludes (i)working capital loans; any part of the principal that has fallen due for repayment one year prior to the date of transfer if the transfer date is related to the expiry of the concession period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority. All exclusions as mentioned above form part of debt due under its normal parlance and understanding. Therefore we request that these exclusions be deleted "Provisional Certificate" — There seems to be a typographical error as it refers to Article 0(d) "Punch List" — There seems to be a typographical error as it refers to Article 0(d) "Supporting Project Infrastructure" — please confirm that the necessary infrastructure as stated in the said definition would be provided by the Concessioning Authority and is sufficient to handle traffic projected in total for EPL during the Concession period	DCA clauses shall prevail. Refer amended DCA Refer amended DCA Refer Article 7.1 c (i)& (g) of DCA
170.	Article 2.7 Acceptance of the Port Assets	We would appreciate if the Concessioning Authority could share information regarding the climatic, hydrological and general physical conditions of the Project Site / Port's Assets, the nature of the ground and subsoil etc	Available information is provided in Annexures.
171.	Article 3.1(b) (i) read with Appendix 8	One of the Condition Precedents to be achieved by the Concessioning Authority is Environmental Clearance which has already been obtained by it. We request to share a copy of the Environment Clearance with the bidders	Will be provided to the successful bidder at appropriate time.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
172.	Article 3.1 (b)	Please add back the optional clause of "provision of putting in place arrangements for the provision of Supporting Project Infrastructure by the Concessioning Authority" as per the Model Concession Agreement. Please note that sufficient road and rail access to the port is extremely critical for the development of the Project and such connectivity needs to be in place before the Date of Award	**Rail Connectivity** A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc., are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.

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Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
			Road Connectivity EPL plans to develop 2 lane road connectivity parallel to the proposed container terminal connecting the existing roads leads to main gate and west gate. The road construction work will be in synchronization with the operation of the terminal.
173.	Article 3.3	We understand that the Conditions Precedent shall be complied within 90 days from the date of Agreement. We request EPL to increase it to 180 days in line with other port projects awarded/ bid out by Ministry of Shipping. Achieving financial closure with proper documentation will take at least 180 days. Also requirements such as Consent to Establish, Pollution control board clearances etc will take at least 180 days	DCA conditions shall prevail.
174.	Article 5.1 (a) Independent Engineer	Could you please advice the basis for the evaluation of the capability of the applicants for Independent Engineer	Article 5.1 (a) of DCA is self – explanatory
175.	Article 6.2	It does seem that the scope of work indicated in Appendix 7 and in Appendix 6 (referred to in Article 5.1 (a) and Article 6.2 (a) respectively) bring the container handling equipments under the scope of the Independent Engineer. The equipment manufacturers are not ready to share the necessary designs and drawings of the equipments given that they are highly proprietary in nature and it is found that adequate knowledge on this heavy duty imported equipment is not available locally. While we appreciate that the Concessioning Authority may wish to know the kind of equipment etc being purchased, we request that the equipment be removed from the scope of the Independent Engineer	As per Appendix 6, the GA diagram of container handling equipment needs to be provided.

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
176.	Article 6.5.4	This article states that "The Concessionaire shall, commence and complete construction of "Vivo 2" in accordance with the Project Schedule within a period of 51 months of obtaining the Interim Completion Certificate... he Concessionaire hereby covenants and represents that the entire Prject shall be completed within a period of 72 months from the Date ofA ward of Concession." Please note that as per Appendix 5, Project Schedule (Two Phase) Interim Completion Certificate will have to be achieved within 27 months from the Date of Award. Therefore "Phase 2" will have to be completed within 51 months of obtaining the Interim Completion Certificate which is 78 months (27 months + 51 months) and not 72 months as indicated in this article. EPL is requested to issue an amendment clarifying the completion period of the entire Project	Refer amended DCA.
177.	Article 6.4 (b)	Please advise us the exact location of Contractors working area in order to comply with this article	EPL will provide area for batching plant, casting yard, stacking yard, construction material storage, site offices, laboratories, etc at the north of the proposed terminal as per prevailing Scale of Rates subject to availability of the required land.
178.	Article 6.4 (i)	This article states that the Concessionaire will have no objection to the Concessioning Authority to handle or delegate/ authorize handling of cargo vessels carrying less than 40 container per vessel call at other berths. This is a deviation from the Model Concession Agreement. We recommend that this article be deleted	DCA clauses shall prevail.
179.	Article 6.5 (b)	The Concessioning Authority is requested make available all records of sub-soil investigations carried out on its behalf in the Port's Assets	Available reports are enclosed as Annexures.

Sino.	Clause Reference	Query of the Applicant	Response by LPL
180.	Article 6.7 (a)	The said article states that upon receipt of the notice from the Concessionaire the Independent Engineer will proceed to inspect the works and specify the 'Tests' that the Concessionaire is expected to carry out. Any 'Tests' that the Independent Engineer would need should be carried out through the construction phase and not wait for the receipt of notice to be served by the Concessionaire. It is quite possible that the Engineer may prescribe a 'Test' at this point which cannot be carried out at all (e.g. a structure is already completed) and non compliance by the Concessionaire would then be termed a default. Can the 'Test' please be notified in advance once the Independent Engineer is appointed?	Article 6.7.1(a) of DCA is self- explanatory
181.	Article 6.7 (e)	The reduction in the scope of project would definitely have an adverse impact on the project and if a situation as contemplated by this article arises on account of Force Majeure or for reasons solely attributable to the Concessioning Authority then such a situation be treated an Event of Default. Any reduction of scope leads to reduction in capacity, earnings and therefore any payments to the Concessioning Authority does not arise. As the current article is worded it gives an unfair and undue advantage to the Concessioning Authority and hence should be deleted	DCA clauses shall prevail
182.	Article 6.8 Change of Scope	At the outset we believe that this Article results in complications in completing the project within the specified time period and could lead to unnecessary disputes on where such an implementation results in delay. Hence, this Article should be deleted.	DCA clauses shall prevail.
183.	Article 6.8 (g)	Gives the Concessioning Authority an overriding right to decide to carry out the works and also introduce an Independent Contractor whose work may be detrimental to the project completion as well as the project facilities and services. Therefore it is our request that this article be completely deleted	DCA clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
184.	Article 6.8(h)	The Concessioning Authority should consider bearing the cost of such a change of scope as per Article 6.8(f) or in the alternative having the tariff adjusted to give effect to the change of scope under Article 6.8(h). Please confirm	DCA clauses shall prevail
185.	Article 6.9 — Liquidated Damages	(i) We would request the Concessioning Authority that if Liquidated Damages are paid as specified in the first part of Article 6.9 then the Concessioning Authority should not proceed with termination unless it is clear that the Concessionaire has abandoned the project. (ii) We would also request the Concessioning Authority to increase the aggregate delay period from 180 days to 240 days. (iii) We would request that the liquidated damages be only applied if there is a delay in the overall completion of the project and the project is not completed by scheduled project completion date. Delays in achieving the Milestone Dates could always be made up. It is the Concessioning Authority's stated position that the liquidated damages are a genuine pre-estimate of damages the Concessioning Authority is likely to suffer, thus is unclear what damages the Concession Authority would suffer if the Milestone Dates are not met	DCA clauses shall prevail.
186.	Article 7.1 (c) (i) (a)	We would request the Concessioning Authority to confirm that the berthing, sailing, pilotage and towage of vessels will be provided on a 24 x 7 basis.	Yes EPL will provide berthing, sailing, pilotage and towage of vessels on round the clock basis.
		Can you please provide information on the weather and entry/berthing restrictions that will apply to container ships calling at the port?	Government Guidelines shall prevail
		It is necessary for the Concessioning Authority to also consider performance standards for itself on all services that it provides or undertakes to provide to the Concessionaire or the Concessionaires	Government Guidelines shall prevail

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
		customers. In this regard the Concessioning Authority may please confirm the number of pilot boats and pilot tugs that would always be available to ensure the marine services provided and the performance standards for the same	
187.	Article 6.7.(i)(d)	The Concessioning Authority to maintain the dredged depth alongside the berth at (-)16.5 meters which is the proposed draft at the basin	DCA clauses shall prevail. Capital and Maintenance dredging will be carried out by EPL for berthing the vessel However removal of any obstruction / foreign material in the alongside berth area will be the responsibility of the concessionaire at his cost and risk.
188.	Article 7.1(c) (1) (f)	The Concessioning Authority is requested to provide the performance standards and the specifications of all general port infrastructures that would be necessary to ensure smooth functioning of the terminal at its peak project capacity.	DCA clauses shall prevail.
189.		The Concessioning Authority should advice complete details of the capability of this infrastructure to meet the demand requirements at all times for e.g. external truck parking facilities, the traffic capacity of the access roads to the port etc.,	
	Article 7.1 (c) (i) (g)	It is important that just as the Concessioning Authority specifies the performance standards and liquidated damages and penalties for the Concessionaire the same principle should be applied towards the Concessioning Authority in case of its failure to meet its performance and the Concessionaire be suitably compensated on account of such failure	DCA clauses shall prevail..
190.	Article 7.1 (c) (i) i)	It is necessary that the Concessioning Authority specify what it expects in terms of the Concessionaire having to bear common cost since this does not seem to have been considered as part of the	Common costs outside the Project site cannot be envisaged at this stage. In case it is required, a mechanism for sharing of

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Slno.	Clause Reference	Query of the Applicant	Response by EPL
		project evaluation provided by the Concessioning Authority. Please confirm that the Concessionaire is not expected and required to bear any expenses on areas which are not within the Project Site as demarcated in Appendix 1	common cost will be mutually evolved Concessionaire has to bear all the costs within the Project site.
191.	Article 7.2	Please provide us rates and terms of all infrastructure facilities including water, electricity and telecommunication facilities provided to current commercial customers	Refer appendix 12 of DCA.
192.	Article 7.2	What is the surcharge that EPL is charging on utilities to existing commercial customers? Is there any yearly escalation on it? If yes, then by how much?	Refer appendix 13 of DCA.
193.	Article 7.2 (a)	Please provide the exact location of take off point for electricity.	Refer to Clause 7.2 of DCA regarding Utilities and services. "The concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. However, based on the availability of Power, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The Concessionaire will make own arrangements for tapping the same from the main source.
194.	Article 7.2 (b)	Please provide the exact location of the take off point for water	
195.	Article 7.2 (a) & (b)	Please confirm that the 'right of way' from the substation will be granted to the Concessionaire for laying the electricity cables, water pipe lines etc. without any charge.	The charges for 'right of way' may please be seen in Appendix 13 of amended DCA.
196.	Article 7.3	Liability for shortfall in performance: The Concessioning Authority	DCA clauses shall prevail

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
		has set out various performance standards to be achieved by concessionaire in Appendix 15. Could you please clarify: (i) Whether the Concessionaire will be eligible for any incentive in the form of reduced revenue share or additional tariff if the performance norms are exceeded; (ii) One of the Performance Standard's is transit storage dwell time. The Concessioning Authority has set a penalty if the average dwell time exceeds the parameters mentioned in the Performance Standards. In this regard the Concessioning Authority must understand the container operator is not in control of when the boxes are removed or received at the terminal and hence we would request that this Performance Standards be deleted. (iii) The Performance Standard for transit storage dwell time should also ensure that the trade is not incentivized to keep their boxes at the terminal. (iv) The port is requested to reconsider the rate of liquidated damages and the level of shortfall. It is suggested that the rate of liquidated damages be reduced to 0.5% for every 25% reduction in average performance	
197.	Article 8.1. Levy and Recovery of Tariff	Should the regime of tariff regulation be abolished during the tenure of the Concession period and be replaced by a mechanism whereby the tariff be determined through competitive pricing then please confirm that the Concessionaire will be eligible to the same	Refer Appendix 12 of amended DCA
198.	Article 8.1(a)	The article mentions that applicable Tariff guidelines are as set out in Appendix 12. Please attach the current guidelines and accordingly issue an amendment	Refer Appendix 12 of amended DCA
199.	Article 9.1. (a) License Fee	Please explain the calculation behind the License Fee of INR 2,99,35,000. We also understand that this License Fee is subject to escalation notified by EPL from time to time. We request that the License Fee be fixed for the whole Concession Period. Alternatively,	The lease rent shall be as per the SOR of EPL which is subject to escalation & revision as per Land policy guidelines. The lease rent specified in the DCA is as on

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		a fixed escalation as per current guidelines of Ministry of Shipping may be applied. This would remove any ambiguity on the cost structures in future of the Concessionaire	1.1.2012 i.e. Rs. 79/- per sq.m. per annum for the area of 365000 sq.m (730 m x 500m). The amount shall be revised at the applicable rates as on the date of signing of Concession Agreement. Refer Appendix 13 of amended DCA
200.	Article 9.2.(a)	As per the Model Concession Agreement the Concessionaire shall pay to the Concessioning Authority Royalty per month equivalent to quoted percentage of Gross Revenue chargeable by the Concessionaire. The current article in Draft Concession Agreement is significant deviation from the Model Concession Agreement and should be deleted and replaced in accordance with the Model Concession Agreement	Refer article 9.2 (a) in the amended DCA.
201.	Article 9.3 - Utilities or Services	The proposition that the Authority would charge twice the Scale of Rates for any premises or additional utilities or services, made available are discriminatory and of a penal nature and goes completely against the concept of the public- private partnership. It is therefore requested that such additional facilities, if permitted by the Concessioning Authority, be provided at the Scale of Rates as notified	DCA clauses shall prevail.
202.	Article 9.3 — Utilities and Services	Please provide the present rates applicable in respect of land, utilities and services	Refer Appendix 13 of amended DCA
203.	Article 9.4 - Certified Accounts	1. In Article 9.4 the words "details of cargo handled by category" needs to be deleted. The Concessionaire is only handling containers and hence only details of containers handled in terms of their size can be provided. The operators do not have or maintain any data on the cargo in the	The clause is as per MCA and hence DCA clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		containers. 2. It is important that the Concessioning Authority clearly specifies "documents and supporting evidences there to" that are required as referred to in the 2nd paragraph. Please be advised that the container terminal operator has availability only to a limited number of documents and hence these need to be discussed with the Authority and specified upfront.	
204.	Article 9.5.(a). - Escrow Account	We suggest the following withdrawals and appropriations during the Concession Period, at any relevent time, from the Escrow Account shall be in the following order of priority for all taxes due and payable by the Concessionaire (ii)all construction/ implementation expenses relating to the Project/ Project Facilities and Services, subject to limits if any set out under the Financing Documents (iii)all expenses relating to operations and management of the Project/ Project Facilities and Services, subject to limits if any set out under the Financing Documents (iv)towards it debt service obligations under the Financing Documents (v)towards any reserve requirements in accordance with the Financing Documents (vi)towards payment of License Fee (vii)towards payment of Royalty and other sums payable to the Concessioning Authority and liquidated damages, if any	DCA clauses shall prevail.
205.	Article 10.1 (a)	The article states that "Further, any such rights of the Concessionaire shall always be subject to existing rights of way". Please explain what does this mean?	This clause is as per MCA and is self explanatory. Hence DCA clauses shall prevail.

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
206	Article 11 — Shareholding	Article 11 requires that prior approval of the Authority is required for any transfer of shareholding in the Concessionaire and / or direct or indirect change in the Management Control of the Concessionaire. In this regard we request that the need to approach the Concessioning Authority for transfer of shareholding should only be in cases where the transfer is in excess of 25% of the legal or beneficial interest in the equity shareholding of the Concessionaire. It is important that the Concessioning Authority also sets a time within which it would respond to such a request as required under this article	DCA clauses shall prevail.
207	Article 12.1 (f)	Please clarify what you mean by the "manner envisaged under the Request for Proposal" as stated at the end of the first statement of paragraph 1	Refer 2.1.18 (e) of RFP
208	Article 12.1 (f) (ii)	From this article it seems that the intent is that every contractor who works at the terminal needs requisite security clearance. We suggest that this article be deleted since the same is not applicable to other contractors / users at the port. It is also not clear from whom the said security clearance needs to be obtained	DCA clauses shall prevail.
209	Article 13.1 (c) — Change in Law	On review of the said article it is found that the following shall not constitute Change in Law. (i) Imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; (ii) Any rules or regulations stipulated by regulatory authority having jurisdiction over the Project in respect or standards of service. It is common knowledge that such changes could have material	DCA clauses shall prevail

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Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		adverse effect on the project and hence request that the same be deleted	
210		We would request that the article be amended so that any material adverse effect arising out of the change in law is borne by the Concessioning Authority. The Article also states that the Concessionaire is obliged to incur Additional Cost in an accounting year, any such Additional Cost above a sum of Rs. 88.90 crores may at the option of Concessioning Authority be borne by the Concessioning Authority. It is clarified that Additional Cost up to Rs. 88.90 crores (Rupees Eighty Eight Crores and ninety lakhs only) in any accounting year shall be borne by the Concessionaire.	
	Article 13.2 (b)	Article 13.2(c) states that if as a result of Change in Law, the Concessionaire incurs a reduction in costs of other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceed Rs. 6.35 crores (Rupees Six Crore and thirty five lakhs only) in any Financial Year, the Concessionaire shall notify the Concessioning Authority and pay to the Concessioning Authority an amount that would put the Concessionaire in same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Please note that these clauses read together are highly unfair in nature and is solely favoring the Concessioning Authority. Change in Law impacts both the Concessioning Authority and Concessionaire equally and therefore the amount under	DCA clauses shall prevail.

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		consideration should be equal not biased towards the Concessioning Authority	
211.	Article 13.2 (c)	We request that the following paragraph be deleted since such insurance even if available would be very expensive and it has not been considered as part of the cost during upfront tariff setting: "Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2" The objective of any Change in Law article is to compensate the Concessionaire by matters completely outside its control which have a bearing on the contract and resulting in material adverse effect The requirement that the Concessionaire pays any amount if it incurs any reduction in cost or other financial gain or benefit in connection with operation or development of the project is unfair since the Concessionaire has to bear a number of risk which it is not protected against. It would be therefore prudent that this article be reviewed and deleted	DCA clauses shall prevail.
212.	Article 15.1 (a) (i)	We suggest that the following words be added at the end of this clause after the word Agreement "which has or is likely to affect the project / the project facilities and services, materially"	DCA clauses shall prevail.
213.	Article 15.1 (a) (iv)	We believe that this article needs to be reasonable and would request the delay in payment of royalty article be reworded as follows "if the Concessionaire, at any time, defaults in the payment of Royalty and such default is not rectified within 30 days of receipt of the notice from the Concessioning Authority."	DCA clauses shall prevail.

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ADANI ENNORE CONTAINER TERMINAL PVT LTD AHMEDABAD

Annexure-I

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
214.	Article 15.1 (a) (x)	We would request that the following be added at the end of the article "and provided such appointment is not stayed within a period of 30 days".	DCA clauses shall prevail.
215.	Article 15.1 (a) (xv)	The Concessioning Authority please clarify what is meant by "beneficial interest"	It is self-explanatory
216.	Article 17 - Compensation	The Concession agreement is for a period of 30 years and normally one would find that there would be steady reduction in the amount of debt due over a period of time largely tending to an minimal or immaterial amount after the first 7 to 8 years of the project. In such cases the use of debt due may not be an appropriate compensation especially if it is meant to be "lower or lowest". Therefore we suggest the following: PI In case of Article 17.1. (a)(i) — The compensation should be higher of the book value or debt due. In the case of Article 17.1. (b) — We suggest this article 17.1 (b) be deleted and a proviso be inserted stating that the compensation under this article shall under no circumstances be lower than 90% of debt due	DCA clauses shall prevail.
217.	DCA Appendix I— Project Site	Physical Conditions RFP document Appendix mentions that berth will start at a distance of 570 m from the edge of iron ore berth whereas the feasibility report says 630 m. Kindly clarify • Site Conditions: Please provide a layout of Project Site to be handed over to the Concessionaire with coordinates • Road Infrastructure: Please refer to serial number 19 and 21 on Supporting Project Infrastructure. Road infrastructure should be provided by the Date of Award in order to have unfettered access to the site	Refer amended DCA. Drawings (PDF) are enclosed in Annexure III. Road Connectivity EPL plans to develop 2 lane road connectivity parallel to the proposed container terminal connecting the existing

Kamarajar Port Limited Chennai

Annexure-I

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			roads leads to main gate and west gate. The road construction work will be in synchronization with the operation of the terminal
		Security Arrangements: 1. Please provide the current security regulation/ procedure at the port. It is understood that the Concessionaire will make arrangements for security inside the terminal premises. 2. Please confirm that EPL will provide for all land side and water side security within its port limits. 3. Please confirm that the Concessionaire will not required to bear any additional security cost in providing any infrastructure as required by the ISPS code in areas not allotted to the Concessionaire and that all such cost will be borne by the Concessioning Authority. • Port Entry: Please advise the quantum of processing fees to be paid by the Concessionaire towards entry passes for work force and vehicle. • General: Please provide the exact location of contractors working area during construction period.	EPL has adopted the ISPS for security regulation and procedures at the port.. The processing fee is available in the EPL website EPL will provide contractors working area at the north of the proposed terminal as per prevailing Scale of Rates subject to the availability of the required land.
218	Appendix 2 — Port's Assets	• Dredging: o Draft at the berth pocket should be in line with the draft at the basin which is at (-)16.5m o Are there any draft restrictions beyond what is mentioned? o Please clarify dimensions of berth pocket that will be dredged by the	Refer Appendix 1, 2A, 2B and 6 of the Amended DCA. Refer amended DCA for Appendix-2

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Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
		Concessioning Authority. o Please provide a general layout of the berth pocket, basis and the approach and entrance channel proposed to be dredged by the Concessioning Authority. o Can the complete dredged area be provided within 24 months of the Date of Award? - Supply of Water and Power: The clause mentions that concessionaire has to arrange the power and water for operations of terminal. Can EPL clarify or provide the information regarding the source/location of water and power from where it can be tapped? - Water supply, drainage and sewerage facilities — o Can you please elaborate in detail what the Concessionaire is expected to undertake in respect of these items? o Please advise what is the approximate location and distance of the nearest drainage and sewerage outfall from the terminal boundary	Refer to Clause 7.2 of DCA regarding Utilities and services.
219	Appendix 2A — Port's Assets	- Dredging: o Draft at the berth pocket should be in line with the draft at the basin which is at (-)16.5m o Are there any draft restrictions beyond what is mentioned? o Please clarify dimensions of berth pocket that will be dredged by the Concessioning Authority. o Please provide a general layout of the berth pocket, basis and the approach and entrance channel proposed to be dredged by the Concessioning Authority. o Can the complete dredged area be provided within 24 months of the Date of Award? - General: Supply of Water and Power, Lighting, Sewerage	Refer Appendix 2, 2A, 2B and 3 of the Amended DCA. Refer amended DCA for Appendix-2

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
		System, Bunkering and .Other support facilities is not mentioned under Port's Assets	Refer to Clause 7.2 of DCA regarding Utilities and services
220	Appendix 2B — Port's Assets	• Dredging: o Draft at the berth pocket should be in line with the draft at the basin which is at (-)16.5m o Are there any draft restrictions beyond what is mentioned? o Please clarify dimensions of berth pocket that will be dredged by the Concessioning Authority. o Please provide a general layout of the berth pocket, basis and the approach and entrance channel proposed to be dredged by the Concessioning Authority.	Refer Appendix 2, 2A, 2B and 6 of the Amended DCA. Refer amended DCA for Appendix-2
		• General: Supply of Water and Power, Lighting, Sewerage System, Bunkering and Other support facilities is not mentioned under Port's Assets	Refer to Clause 7.2 of DCA regarding Utilities and services.
221	Appendix 4 D Annexure on Construction Standards, Operations and Maintenance	(i) Page 143 of the Draft Concession Agreement — please advise the connection of the words 'container train wheel loads' in respect of the Berth structure? (ii) Page 152 of the Draft Concession Agreement — In section E on Operations and Maintenance Standards the following phrase is not relevant and may be deleted. "The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR" F Safety StandardsPlease note that for a container terminal the	There are no such words in pg.no. 143 of DCA. DCA clauses shall prevail. Safety standards indicated in DCA are general in nature.

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		following standards do not apply and thus removed from the Draft Concession Agreement. 1.OStD — Guidelines — 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals 2. National Fire Codes (National Fire Protection Association — USA) 3. International Safety Guide for Oil Tankers & Terminals 4. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 5. The Petroleum Act, 1934 along with the Petroleum Rules 6. Guidelines by the Fire Advisor, CCE & DG FASLI, Government of India	The concessionaire shall ensure compliance with the safety standards as relevant from time to time including those mentioned in the DCA.
222.	Appendix 4A - Capacity Calculations	Please provide a basis of arriving at capacity of 800K TEU for interim operation on a 400m wharf. The capacity of 800K TEU on 400m wharf equates to 2000 TEUs per metre of quay. Existing terminals at Chennai Port are reporting productivity below 1000 TEUs per meter of quay. The capacity of 0.8 mnTeus is unrealistic and since MGT is linked to "capacity", we request EPL to consider this and clarify/amend the Phase I capacity.	It is as per the guidelines issued by the government of India. Refer amended DCA for Appendix-4.
223.	Appendix 5 Project Schedule	The Project Schedule should also include the timelines for dredging works by the Concessioning Authority. Please extend the Phase I completion time from 27 months from the Date of Award to 36 months from the Date of Award and shift other milestones accordingly	Refer amended DCA.
224.	Appendix 6 Design and Drawings	• Subsection II - As already explained earlier in this note the comments on Article 6.2, designs, drawings and technical specification are not shared by equipment manufacturers and are of a proprietary nature. Therefore all references to drawings	As per Appendix 6 the GA diagram of container handling equipment need to be provided.

Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		related to equipments may be removed from the list	
225	Appendix 7 Terms of Reference For Independent Engineer	• As requested earlier in the review of the Independent Engineer should be limited to the civil works and the Concessionaire may provide the necessary certification, third party expert with regard to the equipment. ■ Point 1(j) may be deleted as it is not relevant. There is no need for a DPR to be made once the Date of Award is achieved and the Concessionaire shall proceed directly towards detail design which has to be approved by the Independent Engineer • Point (vi) in these Terms of Reference seem to be beyond the purview of what is the traditional scope of work of an Independent Engineer. The same should be deleted. ■ As regards point 1 (vii) please clarify what other duties and functions are envisaged to be performed by the Engineer. • Further, e.g. under point 2 (ii) the independent Engineer may review and comment on these items and request the Concessionaire to consider his comments. It needs to be clarified that while the Concessionaire may implement such recommendations at his discretion but he cannot be compelled and obliged to implement. As long as the construction carried out by the Concessionaire meets the project requirements and standards and is certified by a third party expert that should suffice. Point 2(xiii) — The Independent Engineer also has to issue an Interim Completion Certificate should the Concessionaire exercise two phase option. This has to be added in the terms of reference of Independent Engineer	DCA clauses shall prevail.
226	Appendix 8 — Permits, Clearances to be	■ Point 2- Can we have the information regarding the type of statutory approval required for	Gadder has to ascertain.

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
	obtained	commencement of construction and commissioning of terminal? ■ Please provide a copy of the Environment Clearance? • What is the validity of the current Environment Clearance? ■ Should the Concessionaire exercise Two Phase Option will the Environment Clearance be valid? • Point 2.3- A sketch depicting the extent of area to be developed as a green belt around the terminal would be required	Shall be provided to the concessionaire at appropriate time.
227	Appendix 12 Upfront Tariff Schedule	• Chapter I — 1.2.viii — The provisions states that in case a vessel idles due to breakdown or non-availability of shore based facilities of Terminal Operator or any other reasons attributable to the Terminal Operator, rebate equivalent to berth hire charges payable to Ennore Port Limited accrued during the period of idling of vessel shall be allowed by the Terminal Operator. Please note that since the Concessionaire is building the berth, berth hire charges payable to Ennore Port Limited be replaced with berth hire charges payable to the Terminal Operator. ■ Chapter I — 1.2.ix — This is not relevant. Please delete ■ Chapter II - Please furnish the tariff schedule.	Refer Appendix 12 – Tariff in the amended DCA.
228	Appendix 13	Please provide the current rates applicable and escalation thereof in respect of land (other than License Premises), Utilities and Services	Refer Appendix 13 in the amended DCA.
229	Appendix 14 Minimum Guaranteed Throughput	The proposed project is large in size and in respect of the volume of capital to be invested and competition with neighboring ports, the Concessionaire will be hard pressed to attract traffic volumes in the initial years. Please also note that ports in the region are offering a complete waiver on MGT for the first five years. We suggest the following MGT requirement.	Amended DCA clauses shall prevail.

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by CPL
		Period from the Date of Award of Concession / Minimum Guaranteed Cargo (TEUS) – Single Phase option / Minimum Guaranteed Cargo (TEUS) – Two Phase options 1st Year: 0 / 0 2nd Year: 0 / 0 3rd Year: 0 / 0 4th Year: 0 / 0 5th Year: 0 / 0 6th Year – 10th Year: 100,000 / 100,000 11th Year – 15th Year: 300,000 / 300,000 16th Year – 20th Year: 500,000 / 500,000 21st Year – 30th Year: 700,000 / 700,000	
230.	Appendix 15, Serial number 2	Please confirm, in the absence of an ICD within the Project Site, who will transport the ICD containers from railway flat to Container Yard and vice versa. Since ICD is not in the scope of Concessionaire any reference to ICD containers in the performance standards should be deleted	The provision is kept for future development.
231.	Appendix 16, Clause 2.0.3	Ideally the requirement of submission of budget to Concessionaire could be dispensed with as interest of Port is covered by clause 4 under the agreement. If the Budget is submitted for Financial Year, the Concessionaire should be allowed to update the projections every three months so that funds earmarked in Escrow Account are aligned in line with actual performance quarter over quarter	DCA clauses shall prevail

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Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
232.	Appendix 16, Clause 2.3.3	While the Budget is submitted for Financial Year, the Concessionaire should be allowed to update the projections every three months so that funds earmarked in Escrow Account are aligned in line with actual performance quarter over quarter.	DCA clauses shall prevail
233.	Appendix 16, Clause 2.3.2 read with 4.1.1	Clause 2.3.2 states that 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 Clause 4.1.1 states that at the beginning of every month, or at such shorter intervals as the Lender's Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following account by depositing such amounts in the relevant Sub-Accounts for making due payments in a month. Please note that the funds already in the Escrow Account or relevant Sub-Accounts till the time it is actually disbursed will earn interest as per Clause 2.3.2 of the Escrow Agreement. The rate of interest is not clear as per the clause. The Concessionaire therefore may lose out on interest income. In order to prevent that the Concessionaire should be allowed to be invest the earmarked sums in short term fixed deposit either with the Escrow Bank or any other bank or mutual funds where lien is marked in favour of Escrow Account and relevant Sub-Accounts? Please advise whether a Bank Guarantee can replace the reserve requirement?	DCA clauses shall prevail
234.	General	Please confirm 24 x 7 pilotage and berthing / sailing of vessels.	Yes EPL will provide pilotage and

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
			berthing/ sailing of vessels on round the clock basis.
235.	ER Section 2.2	Please provide a high resolution auto cad image of the Master plan of Ennore Port Limited	The available drawings are enclosed as Annexure IV
236.	Section 2.3	Please advise on what is the current cost incurred by EPL on Environment Monitoring	Will be provided to the successful bidder at appropriate time.
237.	Section 4.7.2, Evacuation by Rail	There is a strip of land of about 2500m x 150m available at the western side of the proposed container terminal. The Port proposes to develop this area later into a railway yard for containers through a separate BOT/ Captive process. This will facilitate evacuation of containers through rail Please note that railway evacuation is a must for any container terminal and the Concessionaire should be allowed to construct a rail ICD within its premises. Alternatively, the Concessionaire should be provided a dedicated ICD with three rail lines within the proposed railway yard	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Pergament Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013 It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments ensure

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ADANI ENNORE CONTAINER TERMINAL PVT. LTD. AUTHORISED SIGNATORY

Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.
238.	Chapter 6 - Phase Wise Project Cost	Please provide the cost estimates for the Two Phase Option as per the Draft Concession Agreement	Cost estimates indicated in the DPR are indicative only. The bidder has to make his own study and assessment. Refer clauses 1.1.4 and 2.1.5 of RFP.
239.	Section 7.4	The handling rate of the operator has been assumed at 2910 per TEU which is extremely low. Please share the revised tariff schedule with the bidders	Refer Appendix 12 – Tariff in the amended DCA.
240.	Chapter VIII, second para	It is mentioned that as a first step after signing the Concession Agreement, the Concessionaire is expected to prepare a detailed project report and get it approved by Ennore Port Limited. Please note that such provisions are not there in the Draft Concession Agreement and therefore this requirement may please be deleted. Please also refer to our query number 70	DCA conditions are relevant. Refer Appendix 7 of DCA.
241.	Cl. 1.3 Schedule of Bidding process	Date for bid due date may please be given.	Bid due date is currently fixed as 10.2.2014.
242.	Cl.2.11.2 Enclosures of bid	Please confirm whether any technical bid is required to be submitted along with the bid like layout drawings etc.,	Clause 2.11 of RFP is self-explanatory
243.	Actual Project cost Page 8 - Actual project cost	Please confirm whether the actual project cost will be changed on completion of the project and the same will be reckoned for the purpose of calculating payments in the event of termination / force majeure etc	Refer Article 17 of DCA which is self explanatory.
244.	Debt Due	Does this mean that borrowing denominated in foreign currency is	DCA clauses shall prevail.

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Annexure-1

Sino.	Clause Reference	Query of the Applicant	Response by EPL
	Page 11 - Debt Due – …. towards Actual Project Cost, expressed in India rupees as may be …… .	not allowed? Please clarify. a) – (i) - It is not clear as to why working capital loans is excluded from the definition of Debt Due as this will be required for the normal operations of the terminal. Request to include the same. – (iii) If refinancing done with reference to the debt relating to the initial borrowing, this need not be excluded.	
245.	Page 12 - Equity	Equity definition may please be modified to include convertible debentures or interest free funds advanced by any shareholder. A extract from the Model agreements being practiced is attached for your reference: "Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest – free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;	DCA conditions shall prevail.
246.	Page 13 - Exclusivity period	Cross reference of 12.2. (c) needs to be verified. Does not match with the clause reference	Refer amended DCA
247.	Page 17 - Project site	Project site definition refers to area demarcated in Appendix I – To be furnished upfront.	Refer Appendix I, IA & IB of DCA. Refer amended DCA for Appendix-I

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Sno.	Clause Reference	Query of the Applicant	Response by KPL.
248.	2.1.iv,vii and 3.2 - Conditions Precedent	The overall timeline of 90days given for the fulfillment of the Conditions Precedents is inadequate considering that period required for financial closure itself would be in excess of the 90 day period. The time provided for achieving these is insufficient and request you to provide 180 days. If international funding is expected, the due diligence formalities alone require about four to five months to complete and hence the change is required. Even for funding within India will require longer time than is provided.	DCA clauses shall prevai
249	3.1 (b) (ii) Page 28 - Handing over of physical possession of project site	Please add "free of utilities and encumbrances in full"	DCA clauses shall prevai
250.	Article 3 – Conditions Precedent - The conditions precedent that are required to be fulfilled by Ennore Port Limited (EPL) are to hand over physical possession of the project site and procurement of clearances.[Clause 3.b]	1. The period stipulated to achieve Financial Closure is just 90 days. Given the enormity of the exercise the said period might be insufficient for the conclusion of all formalities and fulfilment of all conditions precedent under the Financing Agreements. Perhaps some relaxation by way of extending the time line is required. 2. Kindly confirm whether state Pollution control board approval has been taken as part of EIA / EMP by Ennore Port Limited for this project.	DCA clauses shall prevail. NOC obtained from State Pollution Control board
251.	6.3.2 Construction	As per cl. 6.3.2 Phase 2 completion is given as 27 months and 6 3.4.	Refer amended DCA.

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Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
	phase	Phase 2 completion is within 51 months from Phase which totals upto 78 months. Whereas the provision in clause 6.3.4 calls for completion within 72 months. Please clarify.	
252.	12.1 (C) (i) (f) Insurance	As per the provisions of this clause, the employees and its assets of the concession authority needs to be covered by insurance including the Port assets. The concessionaire is responsible for the Project assets and the concessioning authority shall cover the Port assets insurance, since the development and operation of the Port assets are with the concessioning authority. For. Ex. Breakwater, other berths, common areas. Please confirm.	DCA clauses shall prevail Clause 12.1 c.(i)(f) refers to any other insurance that may be required to protect the Port assets.
253.	12.1 (C) (i) (f) - Insurance	What is the limit of such insurance.	Refer clause 12.1 c (ii)
254.	12.1 (f) (ii) Engagement of contractors – Security clearance	Kindly elaborate the procedure for obtaining the same. And Concessioning authority shall take the lead in the getting the same from required authority	Security clearance shall be taken from the concerned authorities and the concessioning authority will assist the concessionaire on a best efforts basis.
255.	12.2 (C) - Competing facility	The concessionaire shall have the First right of refusal for development of CFS, as the same is a direct competing facility for the project. The above provisions are project specific hence request that the above provisions may please be amended.	DCA clauses shall prevail.
256.	6.5 - Obligations of the concessioning authority	The following to be included as additional obligations of Concessioning Authority. • Provision of site access roads and access during	DCA clauses shall prevail.

Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
		construction and operation • Provision of a site for construction material storage	
257.	6.5 (c) Obligations of the concessioning authority	Please clarify the time period required by the Concessioning Authority to obtain the approval of Customs and publish notifications in the Gazette that the Project Facilities and services are ready for Operations	This cannot be envisaged at this stage.
258.	6.8(g) - Seek competitive bids for carrying out the works envisaged in the change of scope	EPL should ensure that granting such rights to perform works and services to other persons does not in any way prejudice the rights of the Concessionaire in respect of its work under the CA and the Fees realizable by the Concessionaire under the Concession Agreement.	DCA clauses shall prevail.
259.	6.8 - Change of Scope	Please clarify whether the duration of the Construction period will be extended as a result of any extended scope of work specified by the Concessioning Authority.	DCA clauses shall prevail.
260.	6.8 - Change of scope	The change of scope to get suitably reflected in the additional financing and therefore in the Debt Due and Equity. The Actual Project Costs should include any additional Change of Scope Provisions may please be amended to include the above.	DCA clauses shall prevail.
261.	9.1.a - License Fee	Presumably payable only from COD This is to be explicitly captured in the document.	License fee towards land rent to be paid in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession
262.	9.1.a - License Fee	Escalation factor for license fee shall be given upfront.	Refer Appendix-13 in the amended DCA
263.	9.3 - Utilities and	Kindly specify the areas that will attract twice the Scale of Rates	Clause 9.3 of DCA is self- explanatory

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
	Services		
264.	9.3 - Utilities and Services	Please clarify as why the Concessionaire needs to pay such rates at twice the scale of rates as notified by the Competent Authority for such utilities or Services. What is the time line for obtaining the necessary utility connections and in the case of electricity, please specify the location of the sub station and whether the cost of transmission lines up to the terminal perimeter would be borne by Concessioning Authority.	DCA clauses shall prevail.
265.	Cl. 9.5 - Escrow Account	Escrow Account will be opened only after achieving the financing tie-up and hence expenses incurred prior to this may not be flowing through the escrow account. To this extent waiver may be provided	DCA clauses shall prevail.
266.	10.1 (a). Ownership of assets	Please clarify what the existing rights of way are.	This clause is as per MCA and is self - explanatory. Hence DCA clauses shall prevail.
267.	9.5.a ii License Fee Payment	The priority may be shifted to below that of debt service which comes under 9.5.a.v. This will be required and insisted upon by the Lenders.	DCA clauses shall prevail.
268.	12.1 (g) Condition survey	Is there a requirement for replacing the equipment before the handing over / end of concession period.	DCA clauses are self - explanatory.
269.	Article 12 – General Rights, Duties and Obligations 12.2 (C) - Concessioning	The concessionaire shall be given first right of refusal for developing the future container terminals within the Port.	DCA clauses shall prevail.

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Sl no.	Clause Reference	Query of the Applicant	Response by ETL
	Authority shall not operationalise any additional facility within port limits for handling containers either on its own or through any other person during the Exclusivity Period i.e. earlier of (i) 5 years from scheduled project completion date ; or (ii) the average annual volume of cargo handled at the project facilities reaches a level of 75% of project capacity for 2 consecutive years. Further, this restriction shall not apply to the additional facilities envisaged at the port for the development of CFS/Buffer Yard and Rail Yard for containers(12.2.C)		

Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
270	13.1 Change in Law - Reckoning date	The reckoning date for change in law shall be the date of submission of price bid and not date of signing of agreement. Since all assumptions which leads to the award of contract are based on the laws as prevailing as on date of submission of tender. The same is being practiced in all other projects.	DCA clauses shall prevail
271	13.2.e- Change in law Last para in page 76	The absorption level of Rs. 6.50 Crores during any Financial Year is very much on the higher side. This may be restricted to Rs. 1 Crore	DCA clauses shall prevail.
272.	Article 13 – Change in Law - The term change in law has been restrictively defined	Change in Law should also include (i) Imposition of new taxes, duties, cess and the like (Currently these are mentioned as exemptions i.e. 13.1(c) (ii) Requirement for new permits, beyond those required to be obtained on the Appointed Date	DCA clauses shall prevail.
		The threshold for determination of change of law should be drastically reduced from Rs.88.90 crores. It should be brought down to Rs.6.35 crores in line with Clause 13.2.(e)(ii).	DCA clauses shall prevail
	As a direct consequence of a change in Law, if the concessionaire is obliged to incur additional cost in any accounting year, any	The concessioning authority should compulsorily bear the additional cost over the reduced threshold unlike at its option now.	DCA clauses shall prevail

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Annexure-1

Sino.	Clause Reference	Query of the Applicant	Response by EPL
	such additional cost above a sum of 91 crores may at the option of the concessioning authority be borne by the concessioning authority. It is clarified that additional cost up to Rs. 91 crores in any accounting year shall be borne by the concessionaire		
273.	13.1 - Definition of Change in Law	If EPL comes under TAMP, would that be treated as Change in Law ? Tariffs may be revised. Please confirm	EPL currently is not under the purview of TAMP. In case it comes under the purview it cannot be considered as change in law
274.	17.3 Transfer fee and charges	Responsibility on Transfer costs at the end of concession period is not addressed. During the normal expiry of concession period (end of 30 years) the transfer costs shall be to the account of Concessioning authority. The clause to be modified to include this.	Clause 17.3 of DCA is self – explanatory
275.	17.1 (A) - Termination due to Force Majeure – Point (i) Non Political Event – Compensation	Should be equal to the Debt Due. The condition of "lower of" should be removed.	This clause is as per MCA and hence DCA clauses shall prevail

Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
	is restricted to lower of Debt Due or Book Value		
276.	Appendix 4 & 5 - Project Schedule	What is the significance of opting for Single or Two Phase option. We request that the concessionaire be given the flexibility to have the second phase as the base option and if required he can develop Phase 1 following the Phase 1 schedule and in any case shall not deviate from Phase 2	DCA clauses shall prevail. Refer amended DCA.
277.	Appendix 4 &5 - Equipment	Please confirm whether the equipment specified has to be brand new or retrofit / used equipment can be brought-in	The equipment specified are the brand new, minimum to be provided by the concessionaire.
278.	Appendix 4 & 5 - Project schedule option	Giving the option to the concessionaire to choose between Single or two phase will result in imbalance of evaluation criteria. Hence request that the same may please be made as Fixed parameter.	DCA clauses shall prevail. Refer amended DCA
279.	Appendix 5 - Activity / level of completion of project	Please confirm that the condition stipulated like achieving 25% civil work / 75% civil work is measured in terms of financial progress or physical progress. Please confirm the mode of assessment of physical progress for a berth structure, since it may become too subjective due to the mode of construction. For. Ex. If elements of superstructure are precast 100% and not erected in full – whether the same would be treated as 100% or partial completion	It is based on physical progress. As per modal concession agreement Appendix 5. Hence DCA conditions shall prevail.

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ENNORE CONTAINER TERMINAL PVT. LTD. ANNEXURE INDIA

Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
280.	Appendix 4 and 5 - Container Parking yard	Please confirm the extent of container parking yard to be done for Phase 1 and Phase 2 and upto what high.	DCA clauses are self - explanatory. Indicative details / typical layouts are given in 4.7.2 of DFR. Refer Amended DCA
281.	Appendix 8 - Environmental clearances	Please provide a copy of the Environmental Clearance License issued by the Ministry of Environment & Forests and also a copy of the EIA and EMP study for the project. Would the Concessionaire need to revalidate the Environmental License based on the final Terminal Design. Please furnish the extent of green belt to be developed for the project and whether the area for such development will be provided by EPL free of cost, since this will not form part of operational area.	Will be provided to the successful bidder at appropriate time.
282.	Appendix 7 - Independent Engineer	Please clarify that any delays by the Independent Engineer to complete tests and issue certificate of completion would not enable the Concessioning Authority to claim Liquidated and Ascertained Damages from the Concessionaire.	DCA clauses shall prevail
283.	Appendix 7 - Independent Engineer	Time frame for review of design and drawings by IE re-submitted by Concessionaires may please be included. Generally within 7 days of re-submission IE shall approve the same. (Ref: Cl. 6.2 C)	DCA clauses shall prevail
284.	Appendix 8 – Environmental clearances	Whether clearances from State Pollution control board has been taken by EPL for the project. Please confirm.	NOC obtained from the State Pollution Control Board

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
285	Appendix 8 - Environmental clearances	Environmental clearance of EPL Master Plan vis a vis this Terminal's environment clearance	Environmental clearance obtained for Second Phase development from MoEF
286	Appendix 12 - Tariffs	Can you please provide an extract of the tariff notification document along with the tariff and basis of arriving tariff. Would the Concessionaire be able to consolidate any of the tariff items.	Refer Appendix-12 of amended DCA.
287	Appendix 13 - Rates applicable in respect of Land, Utilities and Services	Please provide details of rates applicable in respect of land, utilities and services	Refer Appendix 13 of amended DCA.
288	Feasibility report - Potential Traffic for EPL Container terminal	Chennai – Ennore Cluster capacity is shown as 3.60mnTEU whereas it is around 4.2 mn TEUs. With JD is also getting converted to add 0.8mn TEU the capacity is expected to exceed 5mn TEus. The traffic of Chennai - Ennore Cluster is getting doubled in 6 years from now which means the growth is happening at 12% year on year compounded even in case of the low scenario. Kindly justify the same as the traffic growth in the last 2 years and the current year is not expected to cross more than 1-2%.	Traffic assessment for the project in the DFR is indicative only. The bidder has to make his own study/assessment. Refer clause 2.1.3. of the RFP
289	Feasibility report - Backup yard development	Would the dredged material in the harbour basin be made available for the backfill stack yard development. .	The Concessionaire has to make own arrangements for the backfill stack yard

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Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
			developments
290.	Feasibility report - Import of equipment	Would there be any restriction with regard to the import of construction material and terminal equipment from any specific country of origin. Since in the recent past some of the port had experienced certain issues on equipment sourcing based on the country of origin.	Government policy shall prevail
291.	Feasibility report - Dredging	Please specify the distance from the berth length that needs to be maintained at a depth of (-)16m) by the Concessionaire. The battery limits of dredging may please be specified showing the responsibility of the concessioning authority and the concessionaire.	Capital and Maintenance dredging will be carried out by EPL for berthing the vessel. However removal of any obstruction / foreign material in the alongside berth area will be the responsibility of the concessionaire at his cost and risk.
292.	Feasibility report - Geo-technical report	Kindly provide the detailed Geo-technical investigation report prepared by M/s Fugro KND Geotech (Refer Cl. 6.5 (b) Page 37 of Concession agreement)	Available documents are enclosed as Annexure VI.
293.	Layout Plan - Feasibility report	A detailed layout plan may please be given showing the battery limits of the access roads, railway line etc with clear responsibility of EPL and concessionaire.	Drawings in PDF form are enclosed as Annexure III.
294.	Feasibility report - Geo-technical report	Kindly provide the location coordinates of the Bore holes MBH12, MBH13, MBH14	Available documents will be provided
295.	Feasibility report - Evacuation by Rail	Kindly provide the status of the rail connectivity as described in page 66 of the feasibility report.	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc. are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.
296.	VI-1 - Cost estimate – Escalation	Escalations on costs, Interest during construction, weigh bridge costs, preliminary and pre-operative expenses, etc., have not been included in the project cost estimate.	Refer clause 2.1.3 of RFP

Annexure-1

Sno.	Clause Reference	Query of the Applicant	Response by EPL
297.	Feasibility report	Kindly provide latest topographical drawing representing the present ground situation	Latest Topographical drawing is not available. However, the Bidder can ascertain the same as per Clause 2.1.2 of RFP.
298.	Feasibility report	The southern tip of the berth seems to be crossing the shoreline. Is there any filling inside sea allowed in that area and to what extent?	To be seen at the time of execution. It is a construction requirement.
299.	Feasibility report - Fig. 4.4	Is there any fixed parameter like only diaphragm wall is required to be constructed or Any alternative solution to the piled cum D'walled berth is allowed? Please confirm.	Provisions are indicative only. Refer 2.1.5 of RFP.
300.	Feasibility report - Fig. 4.4	Bollard of 250t and 150 t is also shown. Kindly confirm.	
301.	Feasibility report	What is the type of filling from the existing ground level upto +5.0 CD	Bidder has to ascertain the details
302.	Feasibility report - Rail and Road connectivity	EPL to provide the battery limits of Road and Rail connectivity for the project with a "X" point. A layout showing the same may please be given showing the scope of EPL and concessionaire	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization with the operation of the terminal

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc , are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates. Regarding road connectivity, EPL will provide 2 lane road upto the entry and exit gates of the Proposed Container terminal.
303.	Feasibility report - 11 kv sub-station	EPL to give the location of tapping point for electricity. Also please confirm whether separate sub-station is required for the project. If so whether the same will be built by Concessionning authority or concessionaire.	Refer to Clause 7.2 of DCA regarding Utilities and services. "The concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. However, based on the availability of Power, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The Concessionaire will make own arrangements for tapping the same from the main source.

Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
304.	Feasibility report - Temporary Iron ore jetty	EPL to confirm whether the temporary iron ore jetty will be demolished by EPL at their cost and encumbrance free land for the container terminal would be handed over to the concessionaire.	There is no temporary iron ore jetty in the proposed container terminal area
305.	6.1 Designs and drawings	Please clarify that as per Section 6.., the entire scope of dredging including that under the berth deck would be in EPL scope.	Refer Appendix-2 of amended DCA.
306.	Feasibility report - Dredging	As per Chapter VIII page 1, dredging (in EPL scope) could be taken up at 16m away from berthing face even during berth construction. Partly completed work might get affected due to dredging operation. This needs to be defined clearly. Also a detailed dredging program may please be chalked out which can form part of the Appendix and annexed along with the concession agreement showing the time lines.	The dredging will be carried out in synchronisation with the construction of berth
307.	Feasibility report- Cost estimate	Details of cost estimate do not include escalation for cost. As these project are based on Design, build, finance where no escalation on rates are paid by concessionaing authority, the project cost needs to include the same.	Refer clauses 1.1.4 and 2.1.3 of RFP
308.	Feasibility study - Viability analysis Page 75	The Viability analysis does not take into account the replacement value of equipment during the concession period. Please confirm.	The bidder has to make his own study and assessment. Refer clause 2.1.3 of RFP.
309.	Annexure 6.1 - Cost estimate	Please confirm whether customs duty exemption is available for the project and whether EPL would issue necessary essentiality	Government policy shall prevail

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Annexure-1

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		certificate for availing the same. Goods specified in List 19 required for development of Ports as per customs notification. Include the same in Concessioning authority's obligation at clause 6.5 of concession agreement.	
310.	General - Dredging	Please clarify the dredging interfaces: what would be status of dredging at commencement, during construction & after construction of the container terminal works?	The dredging will be carried out in synchronisation with the construction of berth.
311.	General - Area	Kindly provide the Area for batching plant, casting yard, stacking yard, construction material storage, site offices, laboratories, etc. Also any rental charges are payable by concessionaire for the usage of the above temporary land may please be specified.	EPL will provide area for batching plant, casting yard, stacking yard, construction material storage, site offices, laboratories, etc as per prevailing Scale of Rates subject to availability of the required land.
312.	General - Area	Please clarify if any water front for temporary jetty would be available?	No.
313.	General - Area	Whether Labour colony will be permitted inside the port premises?	No.
314.	General - Berthing structure	Please clarify whether the bidder is allowed to select alternative berthing structure schemes other than that indicated in the feasibility report?	Provisions are indicative only. Refer 2.1.3 of RFP.
315.	2.1.18 (a) (iii); & DCA Appendix 12	The Tariff should be set upfront so that Bid can be evaluated based on a common reference point	Clause 2.1.18 (iii) of RFP deleted Up-front tariff may be seen in Appendix 12 in the amended DCA.

Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
316	2.1.18 (a) (vi)	Please clarify the cess that the Authority expects to impose as magnitude of the cess should be considered in submitting a revenue share bid	2.1.18 (vi) of RFP deleted. The modalities of cess if any shall be mutually discussed and decided. (refer article 8.2 of DCA)
317	2.11.2 & 2.11.3	Please advise if the Authorised Signatories can certify / attest the true copies of the documents accompanying the Bid, as mentioned in Clause 2.11.2?	Clauses 2.11.2 & 2.11.3 of RFP are self-explanatory.
318	Annex-I	Please modify Paragraph 28 to make it relevant to single entity bidders.	Parenthesis ( ) in paragraph 28 have been inserted. Refer foot note for the same.
319	Others	Can Bids be accepted by the Authority without the security clearance?	Security clearance received for all the Short listed Applicants.
320	Queries on DCA		
321	6.4 (i)	Please remove this clause. All container vessels shall be handled by the Project, regardless of the container per vessel call	DCA clauses shall prevail
322	7.2 Utilities and Services (Page.59)	Please provide / advise the following items. 1. Location and distance of take off point for water from container terminal 2. Location and distance of take off point for telephone and fibre. 3. Layout of existing utilities / services (electricity, water and drainage), road and rail 4. Any future expansion / development plans for Container terminals	Based on the availability of water and power, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The concessionaire will make own arrangements for tapping the same from the main source and check the suitability of water for construction etc
323	9.1 License Fee	Please provide the basis of calculating the License Fee, and the escalation rate formula.	Refer Appendix 13 of amended DCA. The lease rent specified in the DCA is as on 1.1.2012 i.e. Rs. 79/- per sq m. pa amount for the area of 365000 sq m. (730 m x 500 m). The amount shall be revised at the applicable rates as on the date of signing of

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Annexure-1

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
			Concession Agreement.
324	Appendix 1A - Project Site (Pg 122)	Appendix 1A of Draft Concession Agreement states that the terminal will commence **570m** from northern edge of Iron-Ore berth. Whereas, Section 4.2 of the Feasibility Report (on Pg.31), states that the terminal will commence **610m** from northern edge of Iron-Ore berth Please correct this mistake and provide the correct co-ordinate of the start-off point.	Refer amended DCA. The coordinate of the start of point of 510 m is correct
325.	Appendix 2 - Port's Assets (Pg.123)	Upfront fees to be paid by the Concessionaire for taking over the relevant Port's Assets should be declared now so that it can be factored into the Revenue Share Bid.	There is no up-front fee indicated in the DCA for handing over ports assets indicated in Appendix 2.
326	Appendix 2 - Port's Assets (Pg.123)	It is stated that the Concessioning Authority shall provide -16m CD water depths at waterfront alongside berth **32 months** from Date of Award of Concession. The construction of the quay structure is highly dependent on the dredging works by the Concessioning Authority. Please provide the schedule for dredging works alongside berth, layout and cross sections of the dredging works for assessment of construction duration.	EPL will provide the dredged depth alongside the berth (-) 16 m CD. The dredging will be carried out in synchronisation with the construction of berth. Refer amended DCA.
327	Appendix 2 - Port's Assets (Pg.123)	What is the dimension of the proposed container berth pocket which will be dredged by the Concessioning Authority?	Initially, the Concessioning Authority will provide (-16) m CD water depth at the berth. The Concessioning Authority may consider if commercially viable for further deepening of the channel basin and alongside of the berth areas if necessary guarantee is provided by the Concessionaire for use of additional draft, but is not obligated to do so. Refer amended DCA.

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Annexure-I

Sl.no.	Clause Reference	Query of the Applicant	Response by EPL
328	Appendix 2A - Port's Assets (Pg.124)	It is stated that the Concessioning Authority shall provide -16 m CD water depths at waterfront alongside berth 23 **months** from Date of Award of Concession for Phase I The design and construction of the quay structure is highly dependent on the dredging works by the Concessioning Authority. Please provide the schedule for dredging works alongside berth, layout and cross sections of the dredging works for assessment of construction duration.	EPL will provide the dredged depth alongside the berth (-) 16 m CD. The dredging will be carried out in synchronisation with the construction of berth. Refer amended DCA
329	Appendix 2B - Port's Assets (Pg.125)	It is stated that the Concessioning Authority shall provide -16 m CD water depths at waterfront alongside berth 68 **months** from Date of Award of Concession for Phase 2. The construction of the quay structure is highly dependent on the dredging works by the Concessioning Authority. Please provide the schedule for dredging works alongside berth, layout and cross sections of the dredging works for assessment of construction duration.	
330	Appendix 5 - Project Schedule	More interim Milestones should be included, for example: Appointment of engineering consultants Completion of soil studies Completion of first 50% of berth Completion of full berth Completion of pavement of 50% of yard Completion of pavement of full yard Commissioning of QC, RTG, IT	DCA clauses shall prevail
331	Appendix 5 - Project Schedule (Single Phase) (P:156 & 157))	Please clarify the meaning of "25% of civil work should have been completed". Is the 25% in terms of contract sum or scope of works? Please elaborate on meaning of "erection of equipment". Can award	The percentage refers to the physical progress. Refer amended DCA for Appendix-5

Sl no.	Clause Reference	Query of the Applicant	Response by EPL
		of tender of equipment be considered? It is irrelevant to have upfront milestones for project completion, which will in any case be reviewed by the engaged Independent Engineer.	No DCA clauses shall prevail.
332	Appendix 6 - Designs and Drawings – Design of Key Components (P158)	1. Please advise whether the Concessionaire can propose other alternatives instead of diaphragm wall? 2. What does "parking yard" refer to? 3. What does "hard standing" refer to? Is it different types of paving system e.g. asphalt, concrete block paving etc.?	No. It refers to Container stackyard Heavy duty concrete block pavement
333	Appendix 13 - Rates Applicable in respect of land, utilities and services	Please provide the scale of rates applicable for land, utilities and services.	Refer Appendix 13 in the amended DCA
334	Appendix 14 -Minimum Guaranteed Cargo	Explain how the Minimum Guaranteed Cargo Throughput (MGT) has been derived.	It is based on the percentage of capacity. Refer to amended DCA for Appendix-14
335	Others	The Authority should define the formula for payment of stamp duty for signing the Concession Agreement.	The bidder / concessionaire to ascertain the stamp duty prevailing in Tamil Nadu and its applicability to Ennore Port.
336	Others	Can the Authority indicate the sources of sand and other materials for the construction of the Project?	The bidder / concessionaire to ascertain
337	General	(a.) Please confirm if the Concessioning Authority will provide the rail connectivity till the project area on or before commencement of commercial operations	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide basic infrastructure such as adequate reception and dispatch line, loading and unloading line and engine

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Sno.	Clause Reference	Query of the Applicant	Response by EPL
			escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail infrastructure in synchronization w.r.t. the operation of the terminal. The terminal operator has to make own arrangements for receipt and dispatch of containers through rail from the common rail infrastructure which is under consideration for development by EPL. Further development of the receipt and dispatch yard, handling equipments etc., are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.
		(b.) Please provide Bore log data for the project	Available reports are enclosed as Annexures.
		(c.) Please provide the general layout drawing in CAD/PDF formtat	Drawings are enclosed as Annexure III (PDF) & Annexure IV (Auto cad).
		(d.) Applicability of Stamp duty for the Project and if yes, then the amount to be paid as stamp duty	The bidder / concessionaire to ascertain the stamp duty prevailing in Tamil Nadu and as

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Sl no.	Clause Reference	Query of the Applicant	Response by EPL
			applicability to Ennore Port.
		(e.) The authority may please provide electricity and water free of Cost for the project construction period	Refer to Clause 7.2 of DCA regarding Utilities and services. "The concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. However, based on the availability of Power and Water, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The Concessionaire will make own arrangements for tapping the same from the main source
		(f.) It is requested that Port should provide exclusivity rights to the Concessionaire that it shall not procure/award contract/concessions for similar facilities unless both the Phases the Project is commissioned and the total capacity achievement of 70% is achieved by the Concessionaire.	DCA clauses shall prevail.

APPENDIX-17

Amendments to DCA /RFP Documents

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Amendment No-2 to DCA / RFP documents for development of Container Terminal at Ennore Port

Annexure 2

Sl no.	Reference / Clause no.	Existing provisions as available in DCA / RFP	Amended provisions to be read as
1.	DCA Concession agreement	Para 'H' & 'I'	Para 'H' deleted and para 'I' modified as para 'H'.
2.	DCA Article 1.1	"**Change of Scope**" shall have the meaning assigned to it under Article 6.9(a)	"**Change of Scope**" shall have the meaning assigned to it under Article 6.8(a)
3.	DCA Article 1.1	"**Change of Scope Notice**" shall have the meaning assigned to it under Article 6.9(b)	"**Change of Scope Notice**" shall have the meaning assigned to it under Article 6.8 (b)
4.	DCA Article 1.1	Definition of "Construction phase"	Refer amended definition
5.	DCA Article 1.1	"**Exclusivity Period**" shall have the meaning ascribed to it in Article 12.2(d)	"**Exclusivity Period**" shall have the meaning ascribed to it in Article 12.2 (c)
6.	DCA Article 1.1	Definition of "Project Schedule"	Refer amended definition
7.	DCA Article 1.1	"**Provisional Certificate**" shall have the meaning assigned to it under Article 0 (d)	"**Provisional Certificate**" shall have the meaning assigned to it under Article 6.7(d)
8.	DCA Article 1.1	"**Punch List**" shall have the meaning assigned to it under Article 0(d)	"**Punch List**" shall have the meaning assigned to it under Article 6.7(d)
9.	DCA Article 1.1	"**TAMP**" means Tariff Authority for Major Ports established.	**Deleted.**
10.	DCA Article 1.1	"**Tests**" shall have the meaning assigned to it under Article 0(a) hereof.	"**Tests**" shall have the meaning assigned to it under Article 6.7(a) hereof.
11.	DCA Article 1.1	Definition of "Transaction Documents"	Refer amended definition

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Annexure 2

12.	DCA Article 1.1		"Company" means Ennore Port Limited (Concessioning Authority).
13.	DCA Article 2.6		Clause 2.6 (b) deleted.
14.	DCA Article 3.1		Clause 3.1.(b)(iii) deleted.
15.	DCA Article 4.1		Clause 4.1
16.	DCA Article 5.1	**5.1 Independent Engineer** (a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in APPENDIX 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the	**5.1 Independent Engineer** (a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it set out in reasonable detail the scope of work as indicated in APPENDIX 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If

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		Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid. The decision of the Concessioning Authority shall be final in this regard.	within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioning Authority shall call for a financial bid from the short listed Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid. Clause 5.1.(b) amended. Clause 5.1.(f) deleted.
17.	DCA Article 6.2 (a)	**Review of the Designs and Drawings**	**Review of the Designs and Drawings**

		The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings. Clauses 6.2 (c) to 6.2(j) shall be applicable following the completion of the aforesaid procedure by the Concessionaire	The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.
18.	DCA Article 6.2		Clause 6.2.(b) deleted. Rest of the para Numbers changed accordingly.
19.	DCA Article 6.3		Clause 6.3.1 and 6.3.2 amended. Clause 6.3.3 to 6.3.5 deleted.
20	DCA Article 6.7		Clause 6.7.1 amended and Clause 6.7.2 deleted
21.	DCA Article 6.9		Clause 6.9 (B) deleted
22.	DCA Article 7.1 (a) (xi)	(i) **Employment of Personnel** The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not	(ii) **Employment of Personnel** The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality

Kamarajar Port Limited Chennai

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		amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.	of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility. Further, the Concessionaire shall comply with the requirements of employing the existing personnel/ labour as agreed to and set out in Appendix II. All labour law compliances shall be that of the Concessionaire alone.
23.	DCA Article 9.1	9.1 **License Fee** (a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in	9.1 **License Fee** (a)The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in

Annexure 2

		accordance with Article 2.4, pay to the Concessioning Authority the sum of **Rs.2,88,35,000/- (Rupees. Two Crores eighty eight lakhs thirty five thousand only per annum)** worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (as specified in the bid documents) (the "**License Fee**"). Such amount shall be paid by the Concessionaire in monthly installments.	the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of **Rs.2,88,35,000/-** (Rupees. Two Crores eighty eight lakhs thirty five thousand only per annum) worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (as specified in the bid documents) (the "**License Fee**") Such amount shall be paid by the Concessionaire in half yearly installments in advance before 5th of the first month of the relevant half year from the date of award of concession.
24. DCA Article 9.2	(a)	On an annual basis the Concessionaire shall pay to the Concessioning Authority Royalty equivalent to ----------of the higher of the following ("the Royalty"); i. Gross Revenue chargeable by the Concessionaire; or ii. Revenue that would have accrued for the respective year based on the Minimum Guaranteed Cargo as stipulated in appendix 14, calculated on a monthly basis. This revenue shall be calculated at ----------.	(a) The Concessionaire shall pay to the Concessioning Authority per month equivalent to [•] % ([•] percent) of the Gross Revenue chargeable by the Concessionaire ("the Royalty")

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		-------- per TEU as existed in ---------- and shall be revised every year as per appendix 12 for subsequent years *This amount shall be payable in monthly installments as given below*	
25.	DCA Article 9.2		Clause 9.2. (d) amended and Clause 9.2(f) deleted.
26.	DCA Article 15.1		Clause 15.1 (a) (iii) amended and Clause 15.1.(a) (xviii) and (xix) deleted
27.	DCA Appendix – 1		Appendix-1 amended and Appendix 1-A and 1-B deleted
28.	DCA Appendix-2		Appendix-2 amended and Appendix 2-A and 2-B deleted.
29.	DCA Appendix-4		Appendix-4 amended and Appendix 4-A and 4-B deleted.
30.	DCA Appendix-5		Appendix-5 amended.
31.	DCA Appendix-6	Parking yard	Stacking yard.
32.	DCA Appendix-9	Para a : setting up of Ennore Container Terminal	Para a : Development of Container Terminal at Ennore Port.
33.	DCA Appendix-10	Interim completion Certificate	Interim completion certificate deleted.

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ADANI ENNORE CONTAINER TERMINAL PVT. LTD. AUTHORISED

Annexure 2

34.	DCA Appendix -14		Appendix-14 amended.
35.	RFP Clause 1.1.3		RFP clause 1.1.3 amended.
36	RFP Clause 2.1.5	The Bid should be furnished in the format at Appendix – I, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.	The Bid should be furnished in the format at Appendix – I, clearly indicating the bid offer of Royalty (revenue share) in both figures and words, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account
37	RFP Clause 2.1.18 (a) (i) – (vii)	(a) The Bidder, in case it does not have the O&M experience specified in Clause 2.2.3 of the RFQ, by submitting its Bid, shall be deemed to acknowledge and agree that for a period of at least 5 (five) years from the date of commercial operation of the Project, it shall enter into an operations & maintenance (O&M) agreement with an entity having the specified experience, failing which the Concession Agreement shall be liable to termination. Other Bid conditions shall include:	a. The Bidder, in case it does not have the O&M experience specified in Clause 2.2.3 of the RFQ, by submitting its Bid, shall be deemed to acknowledge and agree that for a period of at least 5 (five) years from the date of commercial operation of the Project, it shall enter into an operations & maintenance (O&M) agreement with an entity having the specified experience, failing which the Concession Agreement shall be liable to termination.

i.	Bidders shall provide such evidence of their continued eligibility for the Project to the satisfaction of the Authority as the Authority may reasonably request from time to time. Bidders may, if they deem fit, furnish such additional information about themselves which they think would be relevant for proving their continued eligibility for the Project.	Clause deleted.
ii.	Bidders shall update any information submitted with the Request for Qualification, which has changed and provide updated information and continue to meet the Qualification criteria set out in the RFQ document.	Clause deleted.
iii.	The Tariff proposed by the successful bidder will need to be approved by the Ennore Port Limited or any other competent authority as may be prescribed by the Government of India. The rates for the various operations shall not exceed those prescribed by Ennore Port Limited or any competent authority to be prescribed by Government of India.	Clause deleted.
iv.	The Bidder would be entitled to recover the following charges from owners/consignees or vessel owners/shipping lines/ agents, as per, The Tariff, under the Applicable Laws, as revised and duly notified by the Ennore Port Limited or any	Clause deleted.

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	other competent authority from time to time: a. Terminal charges, cargo handling charges, wharfage charges and cargo related charges in respect of cargo handling, storage charges, berth hire and other miscellaneous services including the services for which rates were prescribed on cost recovery basis provided in the terminal by the Concessionaire. b. The Concessionaire shall not be entitled to collect any charge which is not notified by EPL or any other competent authority approved by the Government of India to set tariffs. c. Charges on account of port dues and pilotage and any other vessel related charges for vessels sailing to and from the terminal will be raised and recovered by the Authority from the users directly as per the Authority's Scale of Rates.	
v.	In case the Selected Bidder has proposed a management contractor (as provided for in Clause 1.6(d) and 4.2.5 of the Request for Qualification document) he will be required to formalise the tie-up with one of the management contractors through a legally binding agreement and submit the same to	Clause deleted.

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	the Authority not later than 4-weeks from the date of issue of the LOA.	
vi.	The Authority or any competent authority may levy a cess, as they deem appropriate, on handling cargo for the development of deep-drafted approach channel, dredging alongside the berths beyond the levels indicated in the Concession Agreement, roads connecting the Port to an expressway, standard/elevated highway for facilitating faster movement of cargo, or the development/ improvement/ expansion of any other infrastructure provided however that the Authority shall ensure that this terminal is not placed at a disadvantageous position vis-a-vis other terminals in Ennore Port. The Concessionaire shall be liable to collect cess on the cargo handled by him and remit the proceeds to the Authority, from time to time, in accordance with the prescribed procedure. In such a situation the Scale of Rates prescribed in the Concession Agreement shall automatically get enhanced by an amount equal to the amount of cess levied. The Concessionaire will, however, not be allowed to increase the tariff at his terminal on the pretext of investment of the time and revenue to be shared with the Authority nor seek any compensation from the Authority for any reduction in traffic	Clause deleted.

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	or revenues. The 100% cess collected has to be passed on to the Authority within 7 days of the subsequent month.	
vii.	Members of the Consortium shall enter into a binding Joint Bidding Agreement (termed as Memorandum of Understanding in the RFQ document) for the purpose of submitting Bid. The Jt. Bidding Agreement shall, inter alia:	Clause deleted.
	a. Convey the intent to form an Special Purpose Vehicle (SPV) with shareholding/ ownership equity commitment(s) in accordance with the RFQ and this RFP, which would enter into the Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium.	
	b. Clearly outline the proposed roles and responsibilities of each member at each stage	
	c. Commit the minimum equity stake to be held by each member; and include a statement to the effect that all members of the Consortium shall, till the occurrence of the Appointed Date/ Financial Close under the	

		Concession Agreement, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project. viii As per Government Policy, "if there is only one private terminal / berth operator in a port for a specific cargo, the operator of that berth, or his associates shall not be allowed to bid for the next terminal/ berth for handling the same cargo in the same port" (Detailed Government Policy Vide Letter dated 2nd August 2010 is enclosed).	b. As per Government Policy, "if there is only one private terminal / berth operator in a port for a specific cargo, the operator of that berth, or his associates shall not be allowed to bid for the next terminal/ berth for handling the same cargo in the same port" (Detailed Government Policy Vide Letter dated 2nd August 2010 is enclosed).
38.	RFP Appendix – 1 Item 28	We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement	(We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement)
39.	Clause 1.3 of RFP	S.No.4 -Bid due date – [To be informed] S.No.5 – Opening of Bids - On Bid due date [To be informed]	S.No.4 -Bid due date – 1500 IST on **10.02.2014.** S.No.5 – Opening of Bids – Will be intimated in due course.

Kamarajar Port Limited Chennai

ADANI ENNORE CONTAINER TERMINAL PVT LTD AHMEDABAD

CONCESSION AGREEMENT

BETWEEN

KAMARAJAR PORT LIMITED

(THE CONCESSIONING AUTHORITY)

AND

CHETTINAD INTERNATIONAL BULK TERMINAL PRIVATE LIMITED

(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF MULTI CARGO TERMINAL AT KAMARAJAR PORT ON DBFOT BASIS

28th MARCH 2014

CONCESSION AGREEMENT

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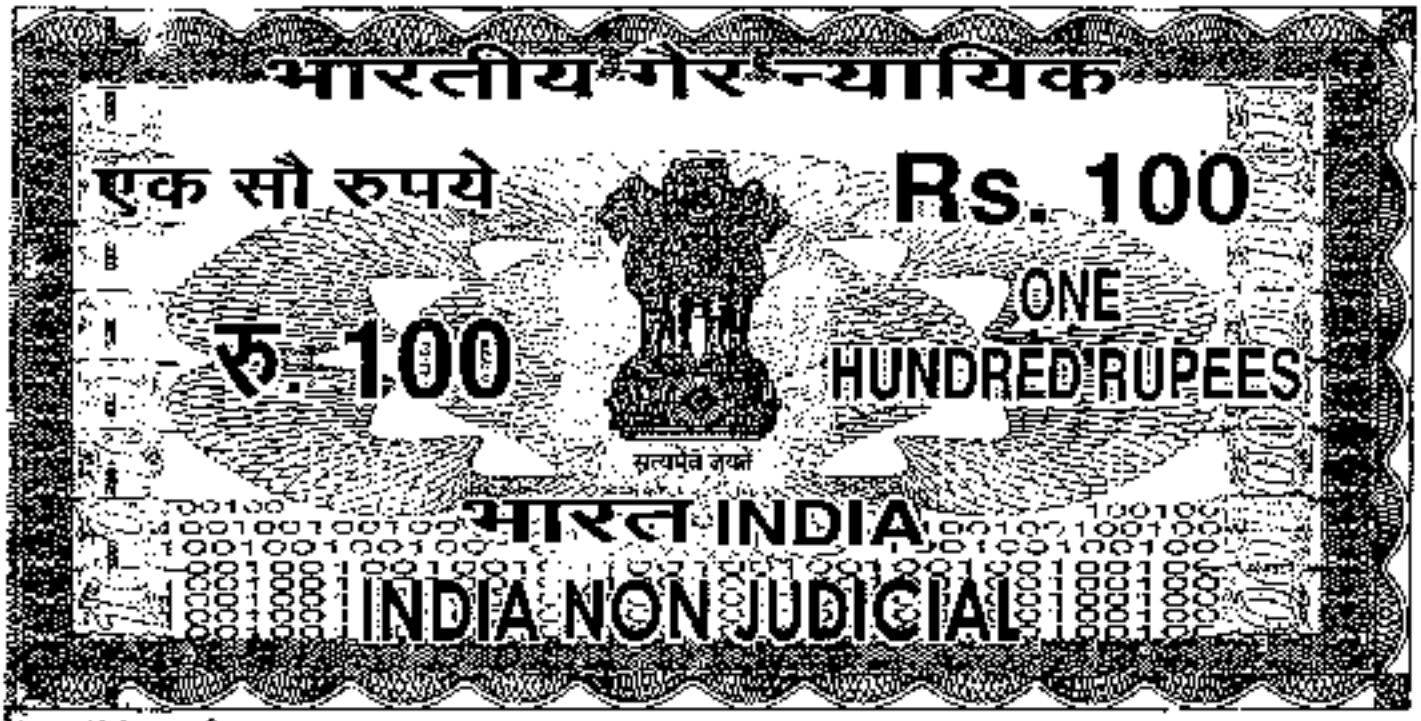
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தமிழ்நாடு தமிழ்நாடு TAMILNADU AU 140314

Chettinad International
1170| Bulk Terminal PVT Ltd
Chennai-6

16 MAR 2014

T. SHANMUGAM
L. No. 9140/ 3/2010 Dt: 20-9-2010
No. 662, Anna Salai, Thousand Lights,
Chennai-600 006.

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Chennai on this 28th day of **March 2014**

BETWEEN:

1. **KAMARAJAR PORT LIMITED,** a company registered under the Companies Act, 1956 and having its Registered Office at 1st Floor, # 23, Rajaji Salai, Chennai 600 001, hereinafter referred to as "**the Concessioning Authority**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

2. **CHETTINAD INTERNATIONAL BULK TERMINAL PVT LIMITED,** a company registered under the Companies Act, 1956, and having its registered office at "Rani Seethai Hall Building", No.603, Anna Salai, Chennai-600 006 hereinafter referred to as "**the Concessionaire**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

Kamarajar Port Limited Chennai

Chettinad International Bulk Terminal Pvt. Ltd. Chennai 600 006

WHEREAS:

(A) The Concessioning Authority is desirous of implementing a Project (as defined hereinafter) for handling 2.00 Million Tonnes per annum of general cargo, which do not generate much dust or pollution during handling through private sector participation;

(B) On 12th July 2013, the Concessioning Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project;

(C) In response to the invitation referred to in recital 'B' above, the Concessioning Authority received applications from various parties including the application dated 4th September 2013 submitted by the Applicant/ Consortium in accordance with the Request for Qualification;

(D) The Concessioning Authority, after evaluating all the applications, shortlisted 6 (Six) number of applicants including the Applicant/Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;

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

(F) The Concessioning Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Applicant/Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated 27.02.2014;

(G) The Applicant/Consortium has/have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 to implement the Project;

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

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS: ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Actual Project Cost" means the actual capital cost incurred by the Concessionaire on the Project and/or the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of the Estimated Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioning Authority.

"Additional Auditor" has the meaning ascribed to it in Article 9.4.

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

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

"Agreement" means this agreement as of date hereof, including Appendices 1 through 16 as may be amended, supplemented or modified in accordance with the provisions hereof.

"Appendix" means the schedules, supplements or documents, appended to this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

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

"Applicant" means Not Applicable

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

"Bid Security" means the bank guarantee of Rs3,02,00,000/- dated 08.01.2014 furnished by the Applicant/Consortium along with its Bid.

"Board" means the Board of Directors of Kamarajar Port Limited.

---

[1] The name and registered office address of the single applicant to be inserted

"Book Value" means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessioning Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessioning Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

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

"Change of Scope" shall have the meaning assigned to it under Article 6.8(a).

"Change of Scope Notice" shall have the meaning assigned to it under Article 6.8(b).

"Company" means Kamarajar Port Limited (Concessioning Authority)

"Completion Certificate" shall have the meaning assigned to it under Article 6.3.

"Concession" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

"Concessioning Authority Event of Default" shall have the meaning as set out under Article 15.1(b).

"Concessionaire Event of Default" shall have the meaning as set out under Article 15.1 (a).

"**Concession Period**" means the period of the Concession specified in Article 2.2 of this Agreement.

"**Conditions Precedent**" shall mean the conditions prescribed in Article 3 of this Agreement.

"**Consortium**" means the consortium consisting of (i) Chettinad Builders Pvt Ltd, and (ii) South India Corporation Pvt Ltd formed, to implement the Project.

"**Construction Phase**" means the period from the Date of Award of Concession to the Date of Commercial Operation.

"**Construction Works**" means all works, equipments and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement.

"**Construction Standards**" means the construction standards set out in the annexure to Appendix 4.

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

"**Contractor**" means a [2] Person with whom the Concessionaire has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services, including the Management Contractor.

"**Date of Award of Concession**" means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

"**Date of Commercial Operation**" means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement

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

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

"Debt Due" means the aggregate of the following sums representing the amounts advanced by the Lenders towards Actual Project Cost, expressed in Indian rupees as may be outstanding and payable to the Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the Project **("the Principal")** but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority; and

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

"Designs and Drawings" means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar

arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Port's Assets/Project Facilities and Services.

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

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

"Equity" means the paid up share capital of the Concessionaire representing the equity component of the Actual Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

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

"Escrow Account" shall have the meaning assigned to it under Article 9.5.

"Escrow Agreement" means the agreement to be executed *inter alia* between the Concessionaire, the Concessioning Authority and the Lenders/Lenders representative substantially in the format set out in Appendix 16 hereto.

"Estimated Project Cost" means the sum of Rs. 151 crore (Rupees one hundred and fifty one crore only) being the cost of the Project as estimated by the Concessioning Authority and disclosed in the Request for Proposal.

"Event of Default" shall have the meaning assigned to it under Article 15.1.

"Exclusivity Period" shall have the meaning ascribed to it in Article 12.2(d).

"Expert" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

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

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

"Financial Year" means any twelve month period commencing from 1st April and ending on 31st March.

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

"Financing Plan" means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the Project submitted by the Concessionaire in accordance with Article 3.1(a)(vii).

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

"GoI" means the Government of India.

"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of

equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.

"Government Authority" means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Port's Assets, the Project Facilities and Services or any portion thereof, but shall not include the Concessioning Authority.

"Gross Revenue" means all the revenues chargeable by the Concessionaire from the Project /Project Facilities and Services.

"Independent Engineer" means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

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

"Insurance Cover" shall have the meaning ascribed to it in Article 12.1(c)(ii).

"Lenders" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Concessionaire to finance the project

"License Fee" shall have the meaning assigned to it under Article 9.1(a).

"Management Contract"[2] means the contract between the Concessionaire and

the Management Contractor, in respect of obligations of the Management Contractor in respect of the Project in accordance with the Request for Proposal.

"**Management Contractor**" means Not Applicable

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

"**Material Adverse Effect**" means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"**Milestone Dates**" means the dates for completion of specified Project activities as contained in the Project Schedule.

"**Minimum Guaranteed Cargo**" shall have the meaning ascribed to it in Article 7.1(a)(xii).

"**Month**" means the calendar month as per the Gregorian calendar.

"**MPT Act**" means The Major Port Trusts Act, 1963 as amended, supplemented, re-enacted or replaced from time to time.

"**Non Political Event**"[3] means the Force Majeure Events set out in Article 14.2.

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[3]This definition may be included only in cases where such a contract is envisaged.

[4]This definition and the usage will be retained depending on the bids i.e. where the consortium meets the technical criteria on the strength of its management contractor who is not a member of the consortium. In such instances the management contractor would need to be identifiable in the contract.

"O&M Contract" means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Agreement and shall include the Management Contract.

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

"Operations and Maintenance Standards" means the minimum standards of operations and maintenance set out in the annexure to Appendix 4 with regards the Project Facilities and Services.

"Other Events" means the Force Majeure Events set out in Article 14.4.

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

"Performance Standards" means the minimum standards of performance set out in Appendix 15 with regards the Project Facilities and Services.

"Performance Guarantee" shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessioning Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

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

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in Appendix 2, belonging to the Concessioning Authority.

"Port Limits" means the boundary of Kamarajar Port as notified by the Official Gazette from time to time.

"Project" means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement.

"Project Capacity" means the capacity of the Project Facilities and Services to handle 2.00 million Tonnes per annum of general cargo specified in RFQ

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

"Project Facilities and Services" means the facilities and services as set out under the Project Requirements, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

"Project Requirements" means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facilities and Services set out in Appendix 4.

"Project Schedule" means the Appendix 5 hereto.

"Project Site" means the area demarcated in Appendix 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

"Provisional Certificate" shall have the meaning assigned to it under Article 6.7 (d).

"Punch List" shall have the meaning assigned to it under Article 6.7 (d).

"Quarter" means a period of 3 (three) Months.

"Reference Tariff" means The Tariff fixed for that commodity / service duly notified by the Concessioning Authority from time to time.

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

"Request for Proposal" or **"RFP"** means the Request for Proposal dated 27.11.2013 issued by the Concessioning Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

"Request for Qualification" or **"RFQ"** means the Request for Qualification dated 12.07.2013 issued by the Concessioning Authority inviting applications in accordance therewith for shortlisting the competent applicants that can subsequently bid for the Project, and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

"Requisition" has the meaning ascribed to it in Article 16.3.

"Royalty" means the revenue share payable by the Concessionaire to the Concessioning Authority, pursuant to Article 9.2 hereof.

"Safety Standards" means the minimum standards of safety set out in the annexure to Appendix 4 with regards the Project/Project Facilities and Services.

"Scale of Rates" means the scale of rates alongwith the statement of conditions with respect thereto framed from time to time and notified by the Company (Concessioning Authority) or such other competent authority, as applicable.

"Scheduled Project Completion Date" means Appendix 5 hereto..

"Selectee" has the meaning ascribed to it in Article 15.4(iv)(b).

"Special Audit" shall have the meaning assigned to it under Article 9.4.

"Statutory Auditors" means a firm of chartered accountants appointed in terms of Section 224 of the Companies Act, 1956 and acting as the statutory auditors of the Concessionaire.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessioning Authority, the Concessionaire and the Lenders.

"Supporting Project Infrastructure" means:

(a) maritime access channels;

(b) port entrance;

(c) protective works including breakwaters, shore protection;

(d) access to port for inland transport (including roads, bridges and tunnels);

(e) rail connections between hinterland and port;

and shall include such other facilities as may be specified by the Concessioning Authority as supporting infrastructure provided/to be provided for the Project.

"SBI PLR" means the prime lending rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

"TAMP" means Tariff Authority for Major Ports established.

"Tariff" means the applicable rate(s) as per Scale of Rates that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"**Tariff Notification**" means the notifications on Appendix I 2 hereto setting out *inter alia* the Tariff and shall include any revisions thereof.

"**Termination Notice**" means the termination notice issued pursuant to Article 16.1 hereof.

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

"**Tests**" shall have the meaning assigned to it under Article 6.7 (a) hereof.

"**The Port**" means Kamarajar Port Limited.

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

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

"**Transaction Documents**" means collectively the Project Contracts and the Financing Documents.

1.2 Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard.

"CISF" means Central Industrial Security Force.

"**DIN**" means German Industrial Standard.

"**FEM**" means Federation of Equipment Manufacturers.

"**IS**" means Indian Standard.

"**ISO**" means International Standards Organization.

"**IEC**" means International Electro Technical Commission.

"**IMDG**" means International Maritime Dangerous Goods.

"**IMO**" means International Maritime Organization.

"**km**" means Kilometre, the unit of length.

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

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

"**m**" means Metre, the unit of length.

"**mm**" means Millimetre, the unit of length.

"**MT**" means Metric Tonne, the unit of weight.

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

"**MSHIC**" means Manufacture Storage and Input of Hazardous Chemicals.

"**OISD**" means Oil Industry Safety Directorate.

"**VAT**" means Value Added Tax.

1.3 Interpretations

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

In this Agreement unless the context otherwise requires:

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

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

(c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(d) the words "include" and "including" are to be construed without limitation,

(e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) any reference to day shall mean a reference to a calendar day;

(h) any reference to month shall mean a reference to a calendar month;

(i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

(l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;

(m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

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

1.4 Measurements and Arithmetic Conventions

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

1.5 Ambiguities and Discrepancies

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

(a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

(b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail; and

(d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

CONCESSION AND PORT ASSETS

2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioning Authority (a) the License Fee and (b) Royalty, and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project/ Project Facilities and Services.

2.2 Concession Period

The Concession hereby granted is for a period of 30 years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services in accordance with the provisions hereof.

Provided that: -

(a) in the event of the Concession being extended by the Concessioning Authority beyond the said period of 30 years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

(b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.

2.3 Acceptance of the Concession

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

2.4 Port's Assets

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

(b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Port's Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Port's Assets

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

2.6 Information about Project Site and Port's Assets

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioning Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

2.7 Acceptance of the Port Assets

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

(a) inspected the Project Site/Port's Assets, including the berths and all structures thereat and its surroundings;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

(c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8 **Peaceful Occupation**

The Concessioning Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation

of the Project Site and Port's Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Port's Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Port's Assets or any part thereof, , the Concessioning Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the **"Conditions Precedent"**):

(a) The following Conditions Precedent shall be satisfied by the Concessionaire:

(i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;

(ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

(iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

(iv) Opening the Escrow Account and executing the Escrow Agreement;

(v) Furnishing a copy of the Management Contract;-Not applicable

(vi) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

(vii) Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are these which are required to be fulfilled by the Concessioning Authority under Article 3.1 (b) hereunder;

(viii) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:

(a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;

(b) it/they has/have the financial standing and resources to fund/ raise finances for undertaking and implementing the Project in accordance with this Agreement;

(c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

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

(x) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.

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

(i) procurement of the clearances required for the Project[5], as set out in Appendix 8;

(ii) handing over physical possession of the Project Site

3.2 The aforesaid Conditions Precedent shall be complied with within [180 (one hundred and eighty)] Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioning Authority at any time in its sole discretion or the Concessioning Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioning Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioning Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1 (b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed

[5] These would constitute clearances for Project Site including the clearance from MoEF and in principle clearances for the Project. On a project specific basis, this may also include consent for establishment.

to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.5 If the Concessioning Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 4

PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioning Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioning Authority encashable and enforceable at Chennai substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of Rs. 7.55 crores (Rupees Seven crores and fifty five lakhs only). Till such time the Concessionaire provides to Concessioning Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee,if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioning Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee,if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 7.55 crores (Rupees Seven crores and fifty five lakhs only) is available in immediate cash to the Concessioning Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioning Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

(a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

(b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7.

(c) The costs and expenses of the Independent Engineer shall be borne by the Concessioning Authority and Concessionaire, equally.

(d) If the Concessioning Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessioning 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 clause (a) above.

(e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

ARTICLE 6

PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

6.2 Review of the Designs and Drawings

(a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.

(b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same (including taking into account the comments/observations of the Concessioning Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

(c) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.

(d) If the Independent Engineer does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be

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entitled to proceed with the Project accordingly.

(e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioning Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

(h) Any review of the Designs and Drawings conducted by the Concessioning Authority is solely for the Concessioning Authority's own information and that by conducting such review, the Concessioning Authority does not accept any responsibility for the same.

(i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioning Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof.

6.3 Construction Phase

The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement ("**Completion Certificate**") not later than 24 Months from the date of commencement of the Concession Period.

6.4 Obligations of the Concessionaire

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

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

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

(c) give written notice to the Concessioning Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessioning Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioning Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioning Authority. For avoidance of doubt any such

modifications/amendments made without the prior written consent of the Concessioning Authority will not be enforceable against the Concessioning Authority;

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

(e) provide to the representative(s) of the Concessioning Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioning Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessioning Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioning Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

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

(g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and

(h) to ensure safe and timely construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and

conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

6.5 Obligations of the Concessioning Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioning Authority shall:

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

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

(c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of the Company or such other provisions as applicable;

(d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment

permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and

(e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

6.6 Suspension of Works

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

(b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioning Authority and thereupon represent to the Concessioning Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioning Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

(a) At least 60 (sixty) Days prior to the likely completion of the Project, the

Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards ("**the Tests**"). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioning Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;

(b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results;

(c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioning Authority a Completion Certificate substantially in the form set forth in Appendix 10;

(d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**") to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the

foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of of the Company for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioning Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioning Authority shall be entitled to terminate this Agreement;

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

6.8 Change of Scope

(a) The Concessioning Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement ("**Change of Scope**"). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to [5% (five percent)] of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Estimated Project Cost ;

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

(c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioning Authority, the following:

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

(ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;

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

(e) The provisions of this Agreement, insofar as they relate to Construction

Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;

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

(g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioning Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioning Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and

(h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioning Authority to consider such Change of Scope.

The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioning Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8 (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of [0.1% (zero point one percent)] of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioning Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Estimated Project Cost, the Concessioning Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioning Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 7

OPERATIONS & MAINTENANCE

7.1 (a) Obligations of the Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) **Berth and Terminal Operations:**

The Concessionaire shall:

(a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;

(b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;

(c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;

(d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;

(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;

(f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;

(g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;

(h) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;

(i) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;

(j) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;

(k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide and

(l) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) **Repairs and Maintenance**

The Concessionaire shall at its own cost:

(a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipments; and

(b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iii) **Replacement of Equipment**

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Project Requirements, at all times during the Concession Period

(iv) **Repairs, Replacement or Restoration**

The Concessionaire shall at its own costs, promptly and diligently

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repair, replace or restore any of the Project Facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever.

(v) Removal / Replacement of Assets

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

(vi) Payments to the Concessioning Authority

The Concessionaire shall make/ensure payments to the Concessioning Authority as per Article 9.

(vii) Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioning Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioning Authority provide the authorized representatives of the Concessioning Authority access to the Port's Assets/the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts

appointed by the Concessioning Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

(viii) **Reports**

The Concessionaire shall provide to the Concessioning Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives.

(ix) **Computer System and Network**

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessionaire Authority may specify from time to time.

(x) **Security Arrangements**

The Concessionaire may make his own arrangements for security in the Project Site/Port Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioning Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements

of International Maritime Organization as may be applicable to India from time to time.

(xi) **Employment of Personnel**

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

(xii) **Minimum Guaranteed Cargo**

The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo handling of the levels set out in Appendix 14 ("**Minimum Guaranteed Cargo**") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

(xiii) **Indemnity Against Claims for Loss of Goods**

Notwithstanding anything contained in the provisions of the Company or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "Action") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioning Authority, its officers, employees, agents and representatives (the "**Indemnitees**") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods,

provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement. If any order is passed against the Indemnities (monetary or otherwise), it shall be the sole responsibility of the Concessionaire to satisfy/pay off to the complete satisfaction of the Concessioning Authority.

(b) Rights of Concessionaire

(i) Preferential and Priority Berthing

The Concessionaire may offer preferential or priority berthing to

any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities and Services. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the Parties in accordance with Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any

(ii) **Unclaimed cargo**

The Concessionaire may at its cost:

(a) after obtaining prior written approval of the Commissioner of Customs or other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and other laws in this regard.

(b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessioning Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

(c) **Obligations of the Concessioning Authority**

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

(i) **Marine and Port Services**

The Concessioning Authority shall provide/ cause to be provided, to the Concessionaire, the following services-

(a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;

(b) maintenance of the entrance channel draft at (-) 17m CD;

(c) waterside safety and safety of navigation,

(d) maintenance of the dredged depth alongside the berth at (-) 16m CD

(e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

(f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

(g) provide for/put in place arrangements for provision of Supporting Project Infrastructure other than those covered under the Concession;

(h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and

(i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators

(ii) Approvals

The Concessioning Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

7.2 Utilities and Services

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

(a) the power made available shall be as received by the Concessioning Authority from Tamil Nadu Electricity Board (TNEB). The take off point for electricity shall be from the substation at Common substation located not more than 5 Kms from the South wast corner of the proposed Multi Cargo terminal.

(b) the water made available shall be as received by the Concessioning Authority from Chennai Metropolitan Water and Sewerage Supply Board (CMWSSB). The take off point for water shall be the nearest available water line;

(c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioning Authority, install meters to measure the consumption of power and water. The Concessioning Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;

(d) The Concessionaire may, at its cost, make alternate arrangements for

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power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

7.3 Liability for shortfall in performance

In the event the Concessioning Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project /Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioning Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 15 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioning Authority which shall be considered by the Concessioning Authority on merits and the Concessioning Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

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

ARTICLE 8

TARIFF

8.1 Levy and Recovery of the Tariff

(a) The Concessionaire shall be entitled to recover Tariff from the users of the Project

Facilities and Services as per the Tariff Notification, an extract of which is set out in Appendix 12. The Reference Tariffs shall be revised in the manner set out in Appendix 12 and duly notified from time to time by the Concessioning Authority or such other competent authority under the Applicable Laws. The Concessionaire would be free to fix a market linked Tariff (Notified Tariff) higher/lower then the Reference Tariff. The tariff applicable for determining the Royality payable by the Concessionaire shall be the higher of the two Tariffs .. As of the date hereof, the applicable Tariff guidelines are as set out in Appendix 12. The Concessionaire shall, subject to Article 8.2 hereunder, deposit all Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either
of the Concessionaire or of any other person.

(b) The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or any other relief from the Concessioning Authority or any Government Authority, except in accordance with the express provisions of Agreement, the Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff Notification issued by the Concessioning Authority and agrees that the Concessioning Authority shall not be liable for the same in any manner whatsoever to the Concessionaire.

8.2 Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as may be requested by the Concessioning

Authority, on behalf of the Concessioning Authority and remit the same to the Concessioning Authority. Provided, the Concessionaire shall be duly authorized by the Concessioning Authority or such other authority as may be competent in this regard, for the purpose of such collection.

ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of Rs 1,06,65,000/- (Rupees One crore six lakhs sixty five thousand Only per annum) worked out in prevailing scale of rates which is subject to escalation as notified by the Concessioning Authority from time to time (as specified in the bid documents) (the "**License Fee**"). Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession.

(b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI PLR plus 2% (two percent) per annum on the amount outstanding.

9.2 Payments of Royalty

(a) The Concessionaire shall pay to the Concessioning Authority Royalty per Month equivalent to **36.00** % (Thirty Six percent) of the Gross Revenue chargeable by the Concessionaire ("the **Royalty**").

(b) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferments, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue. Further, in computing the Gross Revenue,

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[6] Where the fees is paid on a half yearly/yearly basis, it may also contain an escalation as may be stipulated by the Concessioning Authority.

income from interest, sale of assets, amounts received by the Concessionaire by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and cesses in respect to the Project Facilities and Services, if any collected and paid to any Government Authority shall also be ignored.

(c) Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.

(d) The payment of Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services or 24 months from the date of award of concession, whichever is earlier and shall be irrespective of Date of Commercial Operation.

(e) Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

9.3 Utilities or Services

The Concessionaire shall also pay rent or other charges for any premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be twice the Scale of Rates as may be notified by the competent authority in respect thereof from time to time (the present rates applicable in respect of land, utilities and services are set out in Appendix 13).

9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including

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agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, ship/vessel/user wise information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessioning Authority a financial statement of the Gross Revenue for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioning Authority and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the Gross Revenue ("**Special Audit**").

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Royalty on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @ SBI PLR plus 2% (two percent) on the difference between the Royalty paid by the Concessionaire based on the Gross Revenue reported by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the Royalties as above. Further the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than [5]% (five percent), the Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5 Escrow Account

The Concessionaire shall maintain an escrow account with a bank approved by the Lenders (**"Escrow Account"**), during the subsistence of this Agreement and enter into an agreement substantially in the format prescribed in Appendix 16 with such bank to ensure that all proceeds for financing the Project and all revenues and other receipts arising from the Project and under any agreements, including this Agreement received by the Concessionaire are deposited into such Escrow Account. Provided, the Concessionaire shall not deposit any amounts including the cesses and duties collected by it from the users on behalf of the Concessioning Authority or such other authority in accordance with Article 8.2 hereof or pursuant to any other instructions in respect thereof in the Escrow Account and shall deposit the same in a separate account dedicated for the same and maintained by it in trust for the Concessioning Authority or such other authority.

(a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority[7]:

(i) for all taxes due and payable by the Concessionaire;

(ii) towards payment of License Fee;

(iii) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

(iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

[7] This provision would be discussed at the pre-bid stage and any reasonable requests of the bidders and the lenders would be taken into account with respect to the priority.

(v) towards its debt service obligations under the Financing Documents;

(vi) towards payment of Royalty and other sums payable to the Concessioning Authority and liquidated damages, if any;

(vii) towards any reserve requirements in accordance with the Financing Documents;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Concessionaire in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Concessioning Authority and the Lenders.

(b) All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 shall be appropriated in the following order of priority:

(i) towards taxes and statutory dues payable by the Concessionaire;

(ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

(iii) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

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

ARTICLE 10

ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

(a) Land and Water Area

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

(b) Assets created or provided by the Concessionaire

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

10.2 **Permitted Charge on Assets**

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the Port's Assets.

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

ARTICLE 11

SHAREHOLDING

11.1 Ownership Structure

The Applicant/Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire is as follows:

1. Chettinad Builders Pvt Ltd – 50%
2. South India Corporation Pvt Ltd – 50%

11.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the Exclusivity Period as also maintain their equity holding in the Concessionaire such that[8]:

(a) The Applicant/members of the Consortium legally and beneficially hold not less than 51% (fifty one percent) of its paid up equity capital until 3 (three) years after Date of Commercial Operations and not less than 26% (twenty six percent) of its paid up equity capital during the balance Concession Period; and

(b) M/s Chettinad Builders Pvt Ltd legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium's holding in the paid up equity capital of the Concessionaire.

Notwithstanding the aforesaid, any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior

[8] This provision would be edited depending on whether the bidder is a single applicant or a Consortium. Sub Article (b) will be omitted in case the bidder is a single Applicant.

written approval of the Concessioning Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.]

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

11.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessioning Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessioning Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

ARTICLE 12

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

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

(b) Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

(c) Insurance

(i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

(a) builder's all risk insurance;

(b) loss, damage or destruction of the Project Facilities and Services, at replacement value;

(c) comprehensive third party liability insurance including

injury or death) to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;

(d) workmen's compensation insurance;

(e) marine cum storage cum erection insurance, and

(f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("**Insurance Cover**").

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioning Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the

Concessionaire towards repair or renovation or restoration, or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) **Validity of the Insurance Cover**

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioning Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessinning Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ SBI PLR plus 2% (two percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning Authority by exercising right of set off or otherwise.

(vi) **Waiver of Subrogation**

All insurance policies procured in terms of the provisions hereof

shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessioning Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(d) Indemnification

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

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Site or Port's Assets and/or construction, operation and maintenance of the Project Facilities and Services.

(e) **Assignability**

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

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

(i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and

(ii) authorize or be deemed to authorize the Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

(f) **Engagement of Contractors**

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

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

Provided:

(i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non performance or for any defect, deficiency or delay in the construction and erection and / or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

(ii) the Concessionaire should have obtained requisite security clearance for the Contractor the Concessionaire intends to engage;

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

(iv) any contract that it enters with an Affiliate in respect of the Project shall be on an arms length basis.

(g) **Condition Survey**

(i) The Concessionaire agrees that at least 12 (twelve) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof

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

(ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioning Authority a guarantee issued by a scheduled bank in India for a sum of Rs 7.55 crore (Rupees Seven crore and fifty five lakhs Only) at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioning Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

12.2 Of the Concessioning Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

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

obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

(b) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the like, on account of/in respect of Port's Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioning Authority.

(c) Competing Facilities

The Concessioning Authority shall not operationalise any additional facility within Port Limits for handling defined general cargo either on its own or through any other Person until the earlier of (i) 5 (five) years from the Scheduled Project Completion Date; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of Project Capacity for 2 (two) consecutive years ("**Exclusivity Period**").

(d) General rights of inspection and verification

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

12.3 Of the Concessioning Authority and the Concessionaire

(a) Compliance with Laws and Regulations

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

(b) **Rights to Documents**

(i) **Concessioning Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioning Authority, be returned by the Concessionaire to the Concessioning Authority on the Transfer Date.

(ii) **Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project (the Project Facilities and Services shall be handed over by the Concessionaire to the Concessioning Authority free of cost on the Transfer Date.

(iii) **Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

(iv) **Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

(v) **Substitution Agreement**

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioning Authority of the Lenders' readiness to execute the same.

ARTICLE 13

CHANGE IN LAW

13.1 Change in Law

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

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

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

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

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iii) any rules or regulations stipulated by any other regulatory

authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

13.2 **The Concessionaire's Remedy**

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

(b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 10.57 crore may at the option of the Concessioning Authority be borne by the Concessioning Authority. It is clarified that Additional Cost upto Rs. 10.57 Crore (Rupees Ten crore and fifty seven lakhs only) in any accounting year shall be borne by the Concessionaire;

(c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioning Authority, of the following:

(i) the particulars, nature and the impact of Change in Law on the Project;

(ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and

(iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

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

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

(i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;

(ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI PLR + 2% (two percent) on the amount the payment of which is deferred.





Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2;

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs. 75 lakhs(Rupees seventy five lakhs only) in any Financial Year, the Concessionaire shall notify the Concessioning Authority and pay to the Concessioning Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessioning Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit.

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

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure Event

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

(a) is beyond the control of the Party claiming to be affected thereby (the "**Affected Party**");

(b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and

(c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

14.2 Non-Political Events

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);

(h) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

(c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;

(d) the discovery of geological conditions, toxic contamination or archeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

(a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;

(b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental

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Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;

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

(d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

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

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

(b) industry wide or State wide strikes or industrial action;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;

(d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire

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or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(c) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

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

(b) The Notice shall inter alia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

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

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

(b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

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

14.8 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is

reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Costs, Revised Timetable

(a) Costs

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

(b) Extension of time/period

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

14.10 Termination Due to Force Majeure Event

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

ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

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

(a) The Concessionaire Event of Default

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

(i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;

(ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;

(iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;

(iv) Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;

(v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

(vi) A default under the Management Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

(vii) The Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. [Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;]

(viii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

(ix) the Concessionaire passing a resolution for voluntary winding up;

(x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

(xi) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

(xii) levy of an execution or destraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or destraint remaining in force for a period exceeding 90 ninety) Days;

(xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;

(xiv) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

(xv) a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;

(xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and

(xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) The Concessioning Authority Event of Default

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

(ii) any representation made or warranties given by the Concessioning Authority under this Agreement is found to be false or misleading.

(iii) appointment of a provisional liquidator, administrator or receiver

of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

(iv) levy of an execution or destraint on the Port's Assets in any proceedings against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

(a) Upon the occurrence of the Concessionaire Event of Default, the Concessioning Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(b) Upon the occurrence of the Concessioning Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

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

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s)

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

15.4 Remedial Process

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

(a) the change of management or control/ownership of the Concessionaire;

(b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :

(i) the criteria for selection of the Selectee;

(ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

(iii) handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;

(iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;

(v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and

(vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

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

15.6 Revocation of Consultation Notice

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

15.7 Termination due to Events of Default

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

15.8 Concessioning Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire Event of

Default, the Concessioning Authority may, at its discretion:

(a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;

(b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;

(c) step in and succeed upon election by Concessioning Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

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

ARTICLE 16

TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

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

16.2 Obligations during Termination Period

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

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the Concessioning Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioning Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information

to enable the Concessioning Authority to estimate the likely compensation payable by the Concessioning Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioning Authority.

(a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;

(b) data or records [to be specified by Concessioning Authority] regarding the operation and maintenance of the Project Facilities and Services;

(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

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

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

16.4 Condition Survey

(a) The Concessionaire agrees that on the service of a Termination Notice or at least 12 (Twelve) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioning Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets

to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioning

Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Concessioning Authority on the Transfer Date.

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

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

16.5 Consequences of Termination

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

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

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

owing to the Concessioning Authority by the Concessionaire.

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





ARTICLE 17

COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

(i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to a Other Event compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioning Authority Event of Default under Article 17.1 (c).

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

(b) Termination due to Concessionaire Event of Default

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

(i) the Book Value;

(ii) 90% (ninety percent) of Debt Due;

(iii) the Actual Project Cost;

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

(c) Termination due to Concessioning Authority Event of Default

If the termination is due to a Concessioning Authority Event of Default, the compensation payable by the Concessioning Authority shall be equal to the aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

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

17.3 Transfer Fee and Charges

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

(a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;

(b) the Concessioning Authority in the event of termination due to an

'Concessioning Authority Event of Default or Political Event; and

(c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

17.4 Payment of Compensation to Lenders

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

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

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

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioning Authority fails to pay the compensation on the Transfer Date, the Concessioning Authority shall be liable to pay interest@ SBI PLR plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioning Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioning Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioning Authority the Gross Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioning Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioning Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioning Authority is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning Authority. Provided however, the Concessionaire shall be liable to pay Royalty in accordance with Article 9.2.

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17.7 **Remedies Cumulative**

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

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ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

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

18.2 Concessionaire's Obligations

The Concessionaire shall;

(a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;

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

(c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;

(e) transfer or cause to be transferred to the Concessioning Authority any

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

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

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

18.3 Concessioning Authority's Obligations

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

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

18.4 Risk

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

ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

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

19.2 Assistance of Expert

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

19.3 Arbitration

(a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act

as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.

(b) **Place of Arbitration**

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

(c) **English Language**

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

(d) **Procedure**

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

(e) **Enforcement of Award**

Any decision or award resulting from arbitraton shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) **Fees and Expenses**

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

(g) **Performance during Arbitration**

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

ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

(a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;

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

(f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or

order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

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

(k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioning Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing

the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioning Authority in connection therewith;

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

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

20.2 Representations and Warranties of the Concessioning Authority

The Concessioning Authority represents and warrants to the Concessionaire that:

(a) it is duly organised, validly existing and in good standing under the laws of India;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessioning Authority, enforceable against it in accordance with the terms hereof; and

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

20.3 Disclosure

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

ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is 0.60m m below mean sea level.

21.2 Survival of Obligations

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

21.3 Articles to survive Termination

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

21.4 Joint Responsibility

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

21.5 **Several Obligations**

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

21.6 **Severability**

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

21.7 **Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioning Authority:

CHAIRMAN CUM MANAGING DIRECTOR
KAMARAJAR PORT LIMITED
23, RAJAJI SALAI, 1st FLOOR
CHENNAI 600 001
Fax No: 044 2525 1665

The Concessionaire:

The DIRECTOR
CHETTINAD INTERNATIONAL BULK TERMINAL PVT LTD,
"RANI SEETHAI HALL BUILDING", NO.603, ANNA SALAI,
CHENNAI- 600 006

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

21.8 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.9 Amendments, Modifications or Alterations.

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

21.10 Governing Law

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

21.11 Entire Agreement

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

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

Signed and Delivered by the Concessioning Authority by the hand of its authorized representative **Shri Sanjay Kumar, Director (Operations)** pursuant to Resolution dated **24th February 2014** of its Board of Directors under Common Seal of the Concessioning Authority.

Signed and Delivered by the Concessionaire by the hand of its authorized representative **Shri KR. Narayanan, Director** pursuant to Resolution dated **24th March 2014** of its Board of Directors.

CV. Krishnan
Company Secretary.

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APPENDIX 1

PROJECT SITE

1. PHYSICAL CONDITIONS

The multi cargo terminal Proposed is on the western side of the harbour basin with the continuous berthing face in a north-south orientation. The terminal will start from a distance of 340 m from the northern edge of the Iron-ore berth. The terminal is of 270 mts long with a backup area of 13.50 ha. Drawings showing the location of the proposed terminal is enclosed as Annexure-I.

2. SITE CONDITIONS

The Concessioning Authority shall provide land of 270m long and 500m wide in as-is where-is condition from the face of the berth for development of multi cargo berth, stacking yard, transit shed, service road, gate complex and other associated utility buildings.

The proposed alignment of the berth falls shoreward beyond the existing waterline. This means that the construction of the Berth structure has to be executed on land.

3. ROAD INFRASTRUCTURE

The Concessioning Authority shall provide road access upto the boundary limits of the multi cargo Terminal on or before the date of Commercial Operations.

The Concessionaire is permitted to construct, operate and maintain road infrastructure within the boundary limits of the terminal.

4. SECURITY ARRANGEMENTS

CISF looks after the general security of the port and manning the gates. The Concessionaire shall abide by the security regulations / procedure as stipulated by

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the Concessioning Authority from time to time. The Concessionaire shall provide its own security arrangements for his assets.

5. PORT ENTRY

Entry into Port is based on prior permission. The Concessionaire has to obtain entry passes for the entire work force, tools, vehicles, equipments, etc, deployed for construction and operation of the Terminal. The entry passes for work force and vehicle will be issued on payment of processing fee.

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APPENDIX 2

PORT'S ASSETS

PORT'S ASSETS

1. LAND

The Concessioning Authority shall provide land of 270m long and 500m wide from the face of the berth for the development of multi cargo berth, cargo stacking yard, transit shed, service road, gate complex and other associated utility buildings.

2. DREDGING

At the time of operation of terminal, the Concessioning Authority shall provide the depths as follows in the port,

- -15 m CD at the water front alongside berth.
- -16.5m CD at the basin and
- -17m CD at the approach and entrance channel

The Concessioning Authority may consider, if commercially viable, for further deepening of the channel, basin and alongside of the berth depending on the vessel characteristics and the requirement at the request of the Concessionaire, but is not obliged to do so.

3. SUPPLY OF POWER & WATER

As per clause 7.2, the concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal.The Concessionaire shall be liable for all payments to the concerned authority for power, water and other utilities required for the project during construction and operation phase. Based on the availability of Water and Power, on request, the Concessioning Authority would provide during construction stage of the Terminal.

4. LIGHTING

The Concessioning Authority will undertake general lighting of the port. The lighting within the premises of the terminal would be the responsibility of the Concessionaire.

5. SEWERAGE SYSTEM

At present no sewerage system is available at port. The Concessionaire shall make its own arrangements for the same.

6. BUNKERING

The bunkering will be arranged by the Concessioning Authority, subject to the availability. The Concessionaire or Shipping lines can avail this facility.

7. OTHER SUPPORT FACILITIES

Any other facilities required for the development and opetation of the terminal will have to be arranged by the Concessionaire.

APPENDIX 3

SUBSTITUTION AGREEMENT

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

AMONGST,

THE KAMARAJAR PORT LIMITED, company incorporated under the provisions of the Companies Act 1956 and having its registered office at 1st Floor, #23, Rajaji Salai, Chennai 600001 (hereinafter referred to as "**the Concessioning Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. XXXX Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at ---------- hereinafter referred to as "**the Concessionaire**" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns).

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ---------- ---------- hereinafter referred to as "**the Lender**".

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at---------- ---------- acting for and on behalf of the Lenders listed in Schedule A hereto (hereinafter referred as "**the Lender's Representative**".

WHEREAS,

a) The Concessioning Authority for implementing a Project envisaging _____ _____ by private sector participation (hereinafter referred to as "**the Project**"), has by the Concession Agreement dated -------- entered into between the Concessioning Authority and the Concessionaire (hereinafter referred to as "**the Concession Agreement**") has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;

b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"**Financial Assistance**" means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

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

"**Lender(s)**" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to the Concessionaire, from time to time.

"**Residual Concession Period**" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

"Selectee" means a Person proposed by the Lender/Lender's Representative pursuant to this Agreement and approved by the Concessioning Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

"**Suspension Period**" means the Termination Period as defined in Article 16 of the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Agreement are completed and the substitution has become effective.

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

ARTICLE 2

ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign its rights, title and interest in the Concession to, and in favour of, the Lenders pursuant to and in accordance with the

provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Documents.

ARTICLE 3

SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

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

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

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3.2.3 At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioning Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioning Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessioning Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessioning Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 **Substitution upon occurrence of Concessionaire Default**

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

3.3.2 In the event that the Lenders/Lenders' Representative makes a representation to the Concessioning Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Lenders/Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessioning Authority shall either withhold termination and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire,

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the Concessioning Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.4 Procedure for substitution

3.4.1 The Concessioning Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioning Authority under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement. 3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessioning Authority for shortlisting the bidders for award of the Concession; provided that the Lenders/Lenders' Representative may represent to the Concessioning Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioning Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

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

(a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and

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

3.4.4 If the Concessioning Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the

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Lenders/Lenders' Representative. If no such objection is raised by the Concessioning Authority, the Selectee shall be deemed to have been accepted. The Concessioning Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessioning Authority, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

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





ARTICLE 4

TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 5

TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

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

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessioning Authority is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessioning Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

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

ARTICLE 6

DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

ARTICLE 7

INDEMNITY

7.1 General Indemnity

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

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

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

7.2 Notice and contest of claims

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

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ARTICLE 8

GENERAL

8.1 General

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

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

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

(iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Lender or Concessioning Authority shall have the benefit of this Agreement.

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

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

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

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

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

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

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

(xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms

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of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

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

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

SIGNED AND DELIVERED ON BEHALF OF

.....LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

KAMARAJAR PORT LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

..... ON BEHALF OF THE

LENDERS SETFORTH IN SCHEDULE I

BY . _____

Name :

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APPENDIX 4

PROJECT REQUIREMENTS

The concessionaire shall prepare the development scheme for the multi cargo terminal and get it approved by the port. All care shall be taken by the concessionaire during the construction phase to the safety of men & material. The existing electrical cables and water pipe lines shall not be damaged while developing the facilities. The damaged so caused if any shall be rectified and made good by the concessionaire at its cost. The concessionaire has to construct his own car park area, amenity buildings, like time office, changing/locker rooms, canteen, etc,.within the licensed premises after approval of the port. A security fence may be installed along the perimeter of the terminal after discussion with the port, taking into consideration the safety and smooth flow of traffic.

1. BERTH STRUCTURE

On the date of Commercial Operation, the concessionaire has to complete construction of entire berth length of 270 m with bollards and fenders. The fire fighting system, water supply system and etc., shall be provided at suitable locations. The handing over of the assets as detailed in appendix 1 will take place after signing of the concession agreement.

The concessionaire shall make proper arrangements for drainage in the terminal complex, mainly the stack yards, around transit shed area taking into consideration the existing drainage facilities and the present requirement. The drainage facility shall be so finalized/designed and constructed by the concessionaire at its cost such that there is no stagnation of water within the licensed premises.

1. STACK YARD AND TRANSIT SHED:

The concessionaire may plan the stack yard and transit shed keeping in mind the prevailing conditions of the licensed premises and the cargo profile.

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3. EQUIPMENT

In accordance with the performance standards set out in Appendix 15, **on the date of Commercial Operations,** the **terminal** shall be equipped with the following minimum main equipment **to handle a throughput of 2.00 million Tonnes of defined cargo.**

- Harbour mobile crane tyre mounted 100 Te capacity — 2 Nos.
- Fork Lift Trucks 5 Te capacity — 4 Nos.
- Fork Lift Trucks 10 Te capacity — 2 Nos.

On the date of commercial operation, the berth shall be equipped with the above mentioned **new equipments** to handle 2 Million Tonnes of cargo.

(iii) Others

The personnel and other related facilities should be capable of handling 2.00 Million Tonnes of defined multi cargo in accordance with the Performance Standards set out in Appendix 15.

The indicative and minimum standards and norms in this regard have been set out in the annexure

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Annexure

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

A. General

The Concessionaire shall execute the project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities including transit shed for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

B. Civil Construction Work

B. 1. Multi Cargo Terminal

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The civil construction work may comprise variety of works such as dredging, reclamation, construction of breakwaters, berths, development of back-up area for storage of cargo/containers, approach roads, railways sidings, operational buildings/offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by him meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following paragraphs.

Indian Standards for Construction of Ports and Harbours

IS 4651 – Part – 1 – 1974	Code of practice for planning and design of ports and harbours: Part 1 Site investigation
IS 4651–Part 2–1989	Code of practice for planning and design of ports and harbours Part 2 Earth pressure
IS 4651-Part III-1974	Code of practice for planning and design of ports and harbours: Part III: Loading
IS 4651- Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part 5-1980:	Code of practice for planning and design of ports and harbours Part:5 Layout and functional requirements
IS7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and harbour structures: Part I Concrete monoliths
IS 9527: Part 1:: 1985	Code of practice for design and construction of port

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	and harbour structure: Part 3 Sheet pile walls
IS 9527: Part 4: 1980	Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures
IS 9527: Part 6: 1989	Code of practice for design and construction of port and harbour structures: Part 6 Block work
IS 10020: Part 4: 1981	Recommendations for design and construction of port and harbour components Part 4 Slipways.
IS 9556: 1980	Code of Practice for design and construction of diaphragm walls

Indian Standards for Foundation Work

IS 2911: Part 1:Sec 1:1979	Code of practice for design and construction of pile foundations Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles
IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 1:Sec 3:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles
IS 2911: Part1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles

IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations – Part 1: Design
IS 2974: Part 1: 1982	Code of practice for design and construction of Machine Foundations- Part 1: Foundation for Reciprocating Type Machines.
IS 2974: Part 2: 1980	Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)
IS 2974: Para 3: 1992	Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)
IS 2974:: 1979:	Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary type machines of low frequency.
IS 2974: Part 5: 1987	Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drop crusher and jolter)
IS 1080: 1985	Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).
IS 13094: 1992	Guidelines for Selection of ground improvement techniques for foundation in weak soils.

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IS 875(Part I to V): 1987	Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.
IS 456: 2000	Code of Practice for plain and reinforced concrete.
IS: 800: 1984	Code of practice for general construction in steel
IS: 801: 1975	Code of practice for use of cold formed light gauge steel structural members in general building construction.
IS: 803: 1976	Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.
IS 1893: Part I: 2002	Criteria for Earthquake Resistant Design of Structures Part I – General Provision and Buildings
IS 1893: Part 4: 2005	Criteria for earth quake resistant design of structures –Part 4- Industrial Structures including Stack-like Structures.
IS 4326: 1993	Code of Practice for Earth Quake Resistant design and construction of buildings.

C. Cargo Handling Equipment

C-1 General

The concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers. The equipment shall generally conform to the following standards and code of practices.

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C-2 Mobile Equipment

IS 4357: 2004	Methods for Stability Testing of Fork Lift Trucks
IS 4573: 1982	Specification for Power Driven Mobile Cranes
IS 13473: Part 2-1992/	Cranes - Vocabulary Part 2 Mobile cranes ISO 4306-1985
IS 13558: Part 2:1995/	Cranes - Controls - Layout and Characteristics – Part ISO 7752 -2- 1986 Mobile Cranes
IS 13834 : Part 2: 1993/	Cranes - Classification: Part 2 Mobile cranes ISO 4301 – 2 :1985
IS 13870: Part 2: 1993/	Cranes and Lifting Appliances - Selection of Wire ISO 4308 : 1988 Ropes - Part 2. Mobile Cranes - Coefficient of utilization
IS 14469: 1997/	Mobile Cranes - Determination of Stability ISO 4305 - 1991
IS 14474: Part 1: 1997/	Mobile Cranes - Experimental Determination of Crane ISO 11662 1 :1995 Performance – Part 1 : Tipping Loads and Radii
IS 3173: 1965	Specification for High pressure connections for fuel injection equipment for diesel engines

D. Electrical

IS 325: 1996	Three-phase Induction motors
IS 900: 1992	Code of practice for installation and maintenance of induction motors
IS 1231: 1974	Dimensions of Three-phase Foot-mounted Induction Motors
IS 2223: 1983	Dimensions of flange mounted ac induction motors
IS 3682: 1966	Flame-proof ac motors for use in mines
IS 3842: Part 2 : 1966	Application guide for electrical relays for ac systems: -Part 2 Over current relays for generators and motors

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IS 4029: 1967	Guide for testing three-phase induction motors
IS 8151: 1976	Single-speed three-phase induction motors for driving lifts
IS 8789: 1996	Values of performance characteristics for three-phase induction motors
IS 9628: 1980	Three phase induction motors with type of protection 'n'
IS 10242: Part 3 : Sec 1:1983	Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors
IS 12615: 2004	Energy Efficient Induction Motors - Three Phase Squirrel Cage
IS 13529: 1992	Guide on Effects of Unbalanced Voltages on the Performance of Three Phase Cage Induction Motors
IS 13555: 1993	Guide for Selection and Application of 3-Phase A.C Induction motors for different types of driven Equipment
IS 14122: 1994	Built in thermal protection for electric motors rated up to 660 V ac
IS 14377: 1996	Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation
IS 15429: 2004	Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987	Code of practice for earthing
IS 3151: 1982	Earthing transformers
IS 5553(Part 6) 1991	Reactor Parts – Earthing of Transformers
S 9921: Part 1: 1981	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1 000 V - Part 1: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 1982	Specification for Alternating Current

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	Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction
IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing – Specification
IS 14981: 2001	Live Working - Earthing or Earthing and Short-Circuiting Equipment Using Lances as e Short-Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 : Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732	IS 732: 1989 Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1

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	for working voltages upto and including 1100 V
IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working volages from 3.3 kV upto and including 11 kV
IS 7098 (Part 1) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages upto and including 1100 V
IS 7098 (Part 2) : 1985	Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV upto and including 33 kV
IS 7098 (Part 3) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV upto and including 220 kV
IS 10118 (Part 1) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears : Part 1 General
IS 10118 (Part 2) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 2 Selection
IS 10118 (Part 3) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 Installation
IS 10118 (Part 4) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

E. Operations & Maintenance Standards:

Repairs, Maintenance and Replacement

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

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR.

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

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

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

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

E.1 Maintenance Standards

ISO 4308-1-2003	Maintenance of lifting appliances

ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

L.2 Painting

IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147 : 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419 : 1989	Antifouling paint, brushing for ship's bottom

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	and hulls-Specification (second revision)
IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
IS 6948 : 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships
IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part 1 : Pretreatment
IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

F. Safety Standards

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

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 alongwith The Explosive Substance Act, 1983 & The Explosive Rules, 1983
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.

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9. International Safety Guide for Oil Tankers & Terminals.

10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)

11. MARPOL CONVENTION

12. International Maritime Dangerous Goods Code

BESIDES THE ABOVE, ADDITIONAL CODES AND STANDARDS SHALL BE REFERRED TO , IF REQUIRED





APPENDIX 5

PROJECT SCHEDULE

The Project will be completed and the facilities will be fully operational within 24 months from the date of award of concession.

Milestone date	Activity/level of completion of project
10 months from Date of Award of Concession	Development works should have been started and completed 10%.
17 months from Date of Award of Concession	50% of Development works should have been completed
24 months from Date of Award of Concession	100% of Development works should have been completed

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APPENDIX 6

DESIGNS AND DRAWINGS

The concessionaire agrees and undertakes at its cost, charges and expenses to prepare the design and drawing for key components of the terminal for review by the Independent Engineer. The Concessionaire shall ensure preparation of design and drawing through established and professionally qualified personnel. A concessionaire shall conduct necessary investigations/study for preparation of design and drawing.

Guidelines for Design: The multi cargo berth of quay length 270 m will have to be designed to facilitate berthing of Panamax vessels. Initially, the Concessioning Authority will provide (-16) m CD water depth at the berth. The Concessioning Authority may solely at its discretion, consider further deepening the berth, basin and channel areas depending on vessel characteristics and the requirement, if commercially viable.

The design and construction of various components in the proposed terminal shall be in accordance with the recognized engineering practice and shall conform to the relevant standards. A broad list of such design and drawings is given hereunder which is only indicative and not exhaustive.

I. **Designs of key components**

(i) Quay piles,

(ii) Diaphragm wall,

(iii) Superstructure such as Deck beams and slabs including service facilities such as crane track, cable trench, bunkering arrangements etc.

(iv) Fenders and bollards,

(v) Hard standing for stacking yard,

(vi) Transit shed, buildings, Roads, pavement, etc,.

(vii) Technical specification of the equipment and major components

(viii) Design details of the equipment

(ix) Bar chart indicating period for completion of various stages of progress of work.

(x) Electrical substation

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(xi) Design of the crane

(xii) Logistics Proposal

(xiii) Any other details / design / drawings as required by the independent engineer from time to time.

II Key Drawings

(i) Terminal Overall Layout Plan

(ii) Layout of main and service roads

(iii) Overall Storm water Drainage System

(iv) Layouts of Utility and Service Buildings

(v) Plan and Sectional elevation of Utility and Service Buildings

(vi) Layout of the quay wall

(vii) Plan and sectional elevation of quay wall

(viii) Layout of Piles & Diaphragm wall

(ix) Electrical system block diagram

(x) Electrical layout

(xi) GA diagram of Harbour mobile cranes

(xii) GA diagram of top-lift trucks

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APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

[This Appendix shall stipulate the terms of reference for the Independent Engineer which shall include the scope of work (review of design and drawings, notification of objection thereto, inspection of Construction Works and Tests to be carried out, notification of shortfalls if any, issue of completion certificate, seeking of approval from collector of customs for the purpose of operationalising the facilities and services) which shall include the manner and timeliness of the reports of the Independent Engineer to be submitted while performing the services within the scope of work. Following is an indicative scope of work of the Independent Engineer. The scope would be revised to include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.]

1. Role and functions of the Independent Engineer

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

(i) review and Approval of DPR

(ii) review of the Designs and Drawings;

(iii) review, inspection and monitoring of Construction Works;

(iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;

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

(vi) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(vii) assisting the Parties in resolution of disputes as regards the Design ; and drawings

(viii) undertaking all other duties and functions as envisaged under the Agreement.

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2. **Review of Designs and Drawings**

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

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

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

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

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

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

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Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

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

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

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

(xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

Annexure

Tests

[Depending on the parameters of the Project/Construction Requirements, the Tests shall be carried out by the Concessionaire with Good Industry Practice. The Concessionaire shall be liable for all payments for carrying out the Tests.

A broad list of tests is given hereunder which is only indicative and not exhaustive.

(i) Checking the design details as per standard codes of practice

(ii) Testing of concrete

(iii)Testing of the Reinforced steels

(iv)Testing of the program schedule and flow chart

(v) Testing the equipment for their performances and ratings

(vi)Any other tests as specified by the Independent Engineer

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APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONING AUTHORITY/ CONCESSIONAIRE

1. **PERMITS / CLEARANCES TO BE OBTAINED BY THE CONCESSIONAIRE**

1.1. The Concessionaire shall at all-time maintain valid Applicable permits that may be required for construction and operation of the terminal. The Concessionaire, at its costs shall obtain such Applicable permits from the concerned Government Authorities.

Few such permits (not exhaustive) are listed below:

ACTIVITY	AUTHORITY
Environmental Laws	Ministry of Environment & Forests, GoI and Tamil Nadu Pollution Control Board
Consent to establish and operate	Tamil Nadu Pollution Control Board
Plot Plan approval	Dock Safety Inspector/OISD guidelines
Electrical Installations	Central Electricity Authority
Fire Safety Concerns	OISD guidelines or Applicable international codes / practices
Public Liability Insurance during construction / commissioning	Appropriate Insurance Agency
Customs notification	Commissioner of customs

1.2 The Concessionaire shall be fully responsible to ensure that Environment in general and the water area in particular is not polluted due to the Operations of the terminal. All applicable laws and applicable permits in this connection shall be fully adhered to by the concessionaire as per good industrial practice.

The concessionaire shall give clear indications about the disposal arrangements of waste at the stage of approval.

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The concessionaire shall be solely responsible to obtain all statutory clearances as may be required by law, except for the Environmental Clearance to be obtained by the Concessioning Authority.

The Concessioning Authority will provide assistance to the extent possible in this regard. However, this will not be obligatory on the part of the Concessioning Authority and the Concessionaire shall take full responsibility for obtaining necessary clearances. The Concessionaire agrees and undertakes to comply with all regulations and directories concerning occupational hazards as issued by the Concessioning Authority and relevant authority from time to time. The Concessionaire shall keep the Concessioning Authority informed by sending the copy of the clearances obtained from time to time.

The concessionaire will plan and install comprehensive firefighting system with required equipment, fire hydrants etc., as prescribed under the relevant standards for the terminal.

1.3 The concessionaire shall provide and implement various Pollution Control measures as specified in the various Environmental Protection policies and Acts / Rules. The concessionaire will develop green belts in and around the terminal area to comply with the Environmental Requirements.

2.0 CLEARANCE TO BE OBTAINED BY THE CONCESSIONING AUTHORITY :

The Concessioning Authority has obtained the Environmental clearance.





APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)[9]

THIS DEED OF GUARANTEE executed on this the ---- day of ---- at ----- by ------ ---------- (Name of the Bank) having its Head/Registered office at ------ ---------- hereinafter referred to as **"the Guarantor"** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favour of

THE KAMARAJAR PORT LIMITED, company incorporated under the provisions of the Companies Act 1956, and having its registered Office at 1st Floor, #23, Rajaji Salai, Chennai-600 001 (hereinafter referred to as **"the Board" or "the Concessioning Authority"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a) The Board, vide its Request for Proposal dated [•] (**"the RFP"**) invited duly short listed bidders to implement a project envisaging setting up of Kamarajar multi cargo terminal (more particularly described in Appendix 1 and hereinafter referred to as **"the Project"**);

b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of _____ . ___ . ____ and _____ ("**the Consortium**") **OR** the Board accepted the bid of ___ _____ Ltd. ("the Applicant") and issued the Letter of Intent No _____ dated _____ .

[9] To be issued by a Scheduled Bank in India.

_____ ("**LOI**") to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, ("**the Concession Agreement**") the draft whereof was provided in the RFP;

c) Pursuant to the LOI the Applicant/Consortium has promoted and incorporated a special purpose company _____("**the Concessionaire**"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.

d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [•] (Rupees [•] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s._____ ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs.[•] (Rupees [•] only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the

Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [•] (Rupees [•] only).

6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:

a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;

b. shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;

c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

e. shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee;

f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of

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the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

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

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

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

SIGNED AND DELIVERED by _____ _____ Bank by the hand of Shri _____ its _____ and authorized official.

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APPENDIX 10

CERTIFICATES

COMPLETION CERTIFICATE

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

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

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

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

PROVISIONAL CERTIFICATE

1. I, [[•] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [•], for the Project on design, build, finance, operate and transfer (DBFOT) basis through [• (Name of Concessionaire)], hereby certify that the Tests specified in Article [•] and Schedule-[•] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

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

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

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:	SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)

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APPENDIX 11

PERSONNEL AND LABOUR REQUIREMENTS

NOT APPLICABLE

APPENDIX 12

TARIFFS

1.1. DEFINITIONS

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

i. "Port" shall mean Kamarajar Port Limited

ii. "Coastal Vessel" shall mean any vessel exclusively employed in trading between any Terminal or place in India to any other Port or place in India having a valid coastal license issued by the competent authority.

iii. "Foreign-going Vessel" shall mean any vessel other than a coastal vessel.

iv. "Per day" shall mean a calendar day or part thereof.

v. "Week" shall mean a period of 7 days.

vi. "Month" shall mean a calendar month.

vii. "Hirer" shall mean all users of the port using any of the appliances of the Terminal.

viii. "Free period" shall mean the period during which cargo is allowed storage free of demurrage charges/ground rent and this period shall exclude Customs notified holidays and Terminal's non-operating days.

ix. "Demurrage" shall mean charges payable for storage of cargo in transit area within the Terminal premises beyond free period, as specified in the Scale of Rates.

x. "Defined Cargo" means the following

a) Cobble Stones
b) Grain (Maize, Wheat)
c) Bagged cargoes including sugar
d) Granite
e) Steel Cargo
f) Timber Logs (Excluding pine)
g) Project cargoes
h) Containers subject to a limit of 40 TEUs arriving in a ship which is carrying Project cargo meant for loading / discharging at Kamarajar Port.

xi. "Excluded cargo" means the following

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a) Coal in all forms
b) Iron Ore in all forms
c) Bulk Liquids
d) Automobiles and tractor trailers loaded/discharged on roll-on and roll-off vessels
e) Barged Cargo which are rolled-off or rolled-on
f) Containers

xii. "Other Permissible Cargo" means other than the excluded cargo. The Concessionaire has to obtain prior permission from the concerned authorities including the Concessioning Authority, for handling such cargoes with such terms, conditions and tariffs as approved by the Concessioning Authority.

xiii. "Reference Tariff" means The Tariff fixed for that commodity / service duly notified by the Concessioning Authority from time to time.

1.2. GENERAL TERMS & CONDITIONS

i. The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign going' for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

a) A foreign going vessel of Indian Flag having a General Trading License can convert to Coastal run on the basis of a Customs Conversion Order.
b) A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.
c) In cases of such conversion, coastal rates shall be chargeable by the load Terminal from the time the vessel starts loading coastal goods.
d) In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by the discharge Terminals.
e) For dedicated Indian coastal vessels having a Coastal License from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.

ii. All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

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iii. No claims for refund shall be entertained unless the amount refundable is Rs.100/- or more. Likewise, Terminal Operator shall not raise any supplementary or under charge bills, if the amount due to Terminal is Rs. 100/- or less.

iv. Users shall not be required to pay charges for delays beyond a reasonable level attributable to the Terminal.

v. In case a vessel idles due to breakdown or non-availability of the shore based facilities of Terminal Operator or any other reasons attributable to Terminal Operator, rebate equivalent to berth hire charges accrued during the period of idling of vessel shall be allowed by Terminal Operator.

vi. The concession will be on all the relevant charges for ship-shore transfer, and transfer from / to quay to / from storage yard as well as wharfage on cargo and containers.

vii. Berth Hire charges shall be levied on ship owners / Steamer Agents. Wherever rates have been denominated in US dollar terms, the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the Market Buying rate notified by the Reserve Bank of India, State Bank of India or its Associates or any other Public Sector Banks as may be specified from time to time. The day of entry of the vessel into the port limit shall be reckoned as the day for such conversion.

viii. The day of entry of the vessel to be considered for conversion from dollar denominated tariff to rupee tariff.

ix. A regular review of exchange rate shall be made once in thirty days from the date of arrival of the vessels in cases of vessels staying in the terminal for a longer period. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review

a) The berth hire charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.

b) The charges for coastal cargo vessels shall be denominated and collected in Indian rupees.

x. Interest on delayed payments / refunds.

a) The user shall pay penal interest on delayed payments of any charge under the Scale of Rates. The rate of interest will be 12.25% per annum

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b) Likewise, the terminal operator shall pay penal interest on delayed refunds. The rate of interest will be 12.25% per annum

c) The delay in refunds by the terminal operator will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the user whichever is later.

d) The delay in payments by the users will be counted beyond 10 days after the date of dispatching the bills by the terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services and / or where payment of charges in advance is prescribed as a condition in the Scale of Rates.

xi. For the purpose of calculating the dues, the unit by weight shall be 1 tonne or 1,000 kilograms, the unit by volume measurement shall be 1 cubic metre.

xii. In calculating the gross weight or measurement by volume or capacity of any individual item, fractions up to and inclusive of 0.5 shall be taken as 0.5 unit and fractions of above 0.5 shall be treated as one unit, except where otherwise specified.

xiii. All goods landed within the limits of the terminal shall be assessed on import application or interchange receipt and the fees shall be paid before the goods are removed.

xiv. All goods intended for shipment shall be assessed on export application or interchange receipt and the fees shall be paid before the goods are shipped.

xv. The users shall not be required to pay charges for delays beyond a reasonable level attributable to the Terminal Operator or the Port.

1.3. CHARGES FOR CARGO HANDLING OPERATIONS :

Composite Rate

S.No	Cargo	Unit	Foreign Rs.	Coastal Rs.
A	Cargo Handling Charges	MT		
1	Cobble stones		90.00	-
2	Food Grains & Fertilisers		153.00	-
3	Steel & Bagged Cargo		149.00	90.00
4	Granite		275.00	-

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5	Timber		471.00	-
6	Project Cargo	Freight Tonne*	Rs. 60.00 plus 0.50% ad-valorem	Rs. 60.00 plus 0.30% ad-valorem
B	Berth Hire	GRT /Hr	0.0270 US$	60% of Foreign Rates in Rupees
C	Storage Charges			
1	Free period	5 days		
2	Beyond free period			
a	First Five days	Per ton / day	2.86	2.86
b	6th day to 10th day	Per ton / day	4.30	4.30
c	11th day onwards	Per ton / day	5.73	5.73
D	Miscellaneous Charges	Per Tonne	4.30	4.30

* Freight tonne refers to the higher of the cargo's weight in metric tonnes or its volume in cubic meters. The vessel's cargo manifest showing the weight of the cargo in metric tonnes and volume of the cargo in cubic meters will be used for determining freight tonnes applicable. In the event of any doubt on accuracy of the volume of the cargo, the terminal has the option of appointing a surveyor to measure the volume of the cargo and in the event of any discrepancy between the figures shown in ship's cargo manifest and the terminal's surveyor's measurement, the terminal's figures will only apply. Volume measurements will be as per maximum outer dimensions per package item.

(a) The tariff indicated herein is the Reference Tariff.

(b) The concessionaire is free to fix tariff based on market forces

(c) The Concessionaire shall pay a revenue share at the rate indicated in the Concession Agreement on higher of Reference tariff or Actual tariff notified whichever is applicable for that year.

(d) The Reference tariff rate will be revised every year.

(e) The tariff and its implementation will be based on the principles of common user, non-discriminatory and universal access.

(f) The Concessionaire should notify the public, the rates and conditionality governing the application of such rates and continue to notify the public any further changes in such rates and / or conditionality.

g) The Percentage rate of 'Ad valorem ' unit shall be as follows :

i) Goods imported : The percentage levy shall be on C.I.F value as assessed by Customs for import of goods.

ii) Goods exported : The percentage levy shall be on F.O.B value as assessed by Customs for export goods.

iii) Coastal Goods : The value to be taken for levy shall be as given in Coastal Bill of lading / Invoice.

h) For the purpose of calculation of free period, Customs notified holidays and Terminal's non-working days shall be excluded.

i) Free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.

j) Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.

k) Composite charge for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures etc.

l) The charges for Cargo handling operations indicated above is a composite charge for unlashing of cargo , unloading of the cargo from the vessel including transportation up to the point of storage, storage at stack yard up to a free period, delivery by placement on importer/consignee's nominated vehicle, in the case of import cargo and vice versa operations in the case of export cargo. This composite charge includes cranage, wharfage and supply of labour, wherever necessary and all other miscellaneous charges not specifically prescribed in the rates above.

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APPENDIX 13

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

13.1 Base License fee: Rs.79 per m2 with effect from 1.1.2012 which is subject to an escalation at 5% per annum. The base License fee is to be revised once in every 5 years. Next revision of Base License fee is due on 1.1.2017.
However, this will be subject to Land Management Policy Guidelines issued by Government from time to time.

13.2 Applicable Scale of Rates for Utilities and Services are published in the Company website from time to time. The Scale of Rates presently applicable is enclosed.

APPENDIX 14

MINIMUM GUARANTEED CARGO

MINIMUM GUARANTEED CARGO

Minimum Guaranteed Cargo throughput pertaining to relevant articles and Appendix shall be as follows:

Period starting from Date of Award of Concession	Minimum Guaranteed Cargo Throughput in million tonnes
1st year	0.00
2nd year	0.00
3rd year	0.60
4th year	1.00
5th year onwards	1.40

Note:

1. Date of Award of Concession means the date when the Conditions Precedent have either been satisfied or waived by the party other than the party responsible for satisfying the same (as per clause No.3.1 of Concession Agreement).

2 Year means the period of twelve months commencing from the date of Award of Concession and every twelve months period thereafter, during the terms of this agreement.

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APPENDIX 15

PERFORMANCE STANDARDS

1. Gross Berth Output

The indicative norms for Gross Berth Output are as follows:

Cargo category	Indicative norms
Multi Cargo / Break bulk	
Steel and bagged cargo including sugar	10000 T / day
Cobble Stones	16000 T / day
Food Grains (Maize Wheat)	9000 T / day
Granite	5000 T / day
Timber	3000 T / day
Project Cargo	3000 T / day

2. Transit Storage Dwell Time:

The transit storage dwell time for Break Bulk Cargo is the sum of time of each unit of cargo that remains in the port in a month divided by the number of cargo units handled during that month in the terminal. To further clarify, the time the break bulk cargo remains in the port will commence from the date and time of landing till the date and time of exit from the port in case of import and for export from the date and time the cargo entered the port area till the date and time of the shipment.

Import Multi cargo / break bulk cargo (at stack yard)	5 days after date of completion of ship discharging operation
Export Multi cargo / break bulk cargo	5 days upto commencement of ship loading operation

3. Turn around Time for receipt/delivery operation:

The Turn around Time for receipt/delivery operation shall be the sum of time taken for loading/unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks/trailers/rakes.

(i) Truck for conventional cargo(Single operation)	[4 hours]
(ii) Truck for conventional cargo (Double operation)	[8 hours]

Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of [1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent)] in the average performance which shall be assessed in the following manner.

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. For example, if there is a shortfall in Gross Berth Output by x%, Transit Storage Dwell Time by y% and Turn round time for receipt/delivery operations by z% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be (0.7x + 0.2 y + 0.1 z)%.

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APPENDIX 16

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [•] day of [•] 20[•].

AMONGST"

1. [• LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [•] (hereinafter referred to as the **"Concessionaire"** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. [• (name and particulars of Lenders' Representative)] and having its registered office at [•] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **"Lenders' Representative"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. [• (name and particulars of the Escrow Bank)] and having its registered office at [•] (hereinafter referred to as the **"Escrow Bank"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. BOARD OF DIRECTORS for KAMARAJAR PORT LIMITED, a company incorporated under the provisions of companies act 1956 and having its registered Office at P.T.Lee Chengalvaraya Naicker Maligai, 1st Floor, # 23, Rajaji Salai, Chennai 600 001 hereinafter

   referred to as "the **Concessioning Authority**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

(A) The Concessioning Authority has entered into a Concession Agreement dated [•]

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with the Concessionaire (the **"Concession Agreement"**) for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.

(B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Budget" means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

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

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

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

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

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

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

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

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

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

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Representative and thereafter by the Concessioning Authority.

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

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

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

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

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

(b) all funds received by the Concessionaire from its share-holders, in any manner or form;

(c) all Fee levied and collected by the Concessionaire;

(d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and

(e) all proceeds received pursuant to any insurance claims.

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

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

(a) all taxes due and payable by the Concessionaire;

(b) towards License Fee;

(c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

(d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

(e) towards its debt service obligations under the Financing Documents;

(f) towards Royalty and other sums payable to the Concessioning Authority and liquidated damages, if any;

(g) towards any reserve requirements in accordance with the Financing Documents;

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

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

4.2 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 of the Concession Agreement shall be appropriated in the following order of priority:

(i) towards taxes and statutory dues payable by the Concessionaire;

(ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

(iii) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

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

4.3 Application of Insurance proceeds

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

4.4 Withdrawals during Suspension

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement

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

5.2 Notification of balances

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

5.3 Communications and notices

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

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business Days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien

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

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

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

(a) the Concessionaire commits breach of this Agreement by failing to deposit /cause the deposit of any receipts into the Escrow Account;

(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

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

9. INDEMNITY

9.1 General indemnity

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

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

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss,

damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

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

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

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

10.2 Waiver of sovereign immunity

The Concessioning Authority unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets,

property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessioning Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this

Agreement shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(b) shall not affect the validity or enforceability of this Agreement in any manner.

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

10.6 No third party beneficiaries

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

10.7 Survival

10.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

10.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or

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

10.9 Successors and assigns

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

10.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioning Authority:

CHAIRMAN CUM MANAGING DIRECTOR
KAMARAJAR PORT LIMITED
23, RAJAJI SALAI, 1ST FLOOR
CHENNAI 600 001
Fax No: 044 25251666

The Concessionaire:

The MANAGING DIRECTOR

_____Ltd

_____

_____

Fax No. _____

Email: _____

The Lenders/Lenders representative:

_____Ltd

_____

_____

Fax No. _____

Email: _____

The Escrow Bank:

_____Ltd

_____

_____

Fax No. _____

Email: _____

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

10.11 Language

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

10.12 Authorised representatives

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

10.13 Original Document

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

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

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

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED
For and on behalf of LENDERS by the Lenders' Representative:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

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SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

1.

2.

ENCLOSURE TO APPENDIX 13

SCALE OF RATES

1. DEFINITIONS

Company shall mean Kamarajar Port Limited registered under the Companies Act, 1956. Day shall be reckoned from 6.00 a.m. to 6.00 a.m.

Coasting vessel means a vessel which is engaged in the carriage by sea of passengers or goods from any port or place in India to any other port or place in India. The status of the vessel as borne out by its certification by the Customs or the Director General of Shipping shall be the deciding factor for its certification as coastal or foreign going for the purpose of levy of vessel related charges.

Foreign vessel means any vessel other than coastal vessel.

Gross Tonnage (GT) is the cubic capacity of the whole ship including engine room and crew space but excludes space above deck, cabins, deck shelters, chart houses etc and as recorded in the Certificate of Registry of the vessel.

Pure Car Carriers-Vessels intended to load/discharge any wheeled cargo such as cars, automobiles, trucks, semi-trailer trucks, trailers or railroad cars, crusher units etc., that are driven on and off the ship through ramps.

Automobiles-Any units which can move on wheels/chain including Murphy.

Cold move means without the power of the engine of the vessel

Entry means entering into the Port limits

Shifting means movement of vessel from one berth to another or from berth to anchorage or any other movement within the port limit. Arrival in to the port and departure from the port shall not be considered as movement for this purpose.

Warping means movement of the vessel in the same berth or to another berth by means of mooring ropes only.

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2. CONDITIONS

a) All charges notified hereunder, in various Chapters in terms of U.S. Dollars shall be levied for all Foreign Vessels and Indian Vessels engaged in Foreign Trade. The charges shall be collected from the Owners /Agents in Indian Rupee converting U.S Dollars Rates at market TT buying Rates notified by the State Bank of India / Andhra Bank as on date of arrival of the vessel.

b) A regular review of the exchange rate shall be made once in thirty days from the date of arrival of the vessels in case of vessels staying in the port for more than thirty days. In such cases the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

c) The fraction of a Rupee so arrived at will be rounded off to the next full Rupee.

d) Vessel related charges for coastal vessels shall be recovered at the rates notified in Rupees only.

e) The charges for services and for the use of the crafts and appliances not mentioned in the Scale of Rates are arranged between the Company and the person requiring such services.

f) A Company may, in special cases and for reasons to be recorded in writing exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force or remit the whole or any portion of such rate or charge so levied.

g) Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Company, or to be shipped for export, or to be transshipped, shall be payable before the goods, are so removed or shipped or transshipped.

h) For the purpose of Scale of Rates

1. One unit by weight means 1 tonne (1000 kilograms)
2. One unit by volume measurement means 1 cubic metre; and
3. One unit by capacity measurement for liquids in bulk means 1000 litres

i) In calculating the Gross weight or measurement by volume or capacity of any individual item, fraction upto and including 0.5 shall be taken as 0.5 and fractions over 0.5 shall be taken as one unit.

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j) It shall be the primary responsibility of the party filling the Import/Export Application to declare the correct unit and/or units on the application at the time of filing. In case the required units or units not being available in the relative shipping documents, the party shall actually weigh and/or measure the consignment and then declare the same on the Application before filing with the Company. Any under declaration and/or under statement found at the time of test check by the Company will involve the party liable for the penalty.

3. VESSEL RELATED CHARGES

1. Vessel related charges will be charged on the basis of the Gross Tonnage (GT) of the vessels.
2. For a vessel carrying deck cargo, the deck cargo will be added to the Gross Tonnage of the vessel for determining the Gross Tonnage on which the charges are to be calculated.
3. For a vessel having dual tonnage, the higher tonnage will be taken into account for calculation of all vessel related charges.
4. A foreign going vessel of Indian Flag having a General Trading License can convert to coastal run on the basis of a customs Conversion orders.
5. A foreign going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.
6. In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
7. In cases of such conversion, coastal rates shall be chargeable only till the vessel completes discharging operations; immediately thereafter foreign going rates shall be chargeable by the discharge ports.
8. For dedicated Indian Coastal Vessels having a Coastal License from the Director General of Shipping, no other documents will be required, to be entitled to coastal rates

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A. PORT DUES

Particulars (Vessels Chargeable)	Rates per GT
Coastal Vessels	Rs. 12.37
Foreign Vessels	USD 0.424

Note:

1. Port Dues shall not be levied on:
   i. Vessels belonging to other Indian Ports or vessels belonging to Government of India
   ii. any pleasure Yachts;
   iii. any vessel which, having left this Port is compelled to re-enter it by stress of weather or in consequence of having sustained any damage

2. For foreign going vessels the Port Dues are payable on each entry into the port

3. For coastal vessels, the due is payable once in thirty days provided that the payment of the due once made shall be valid only for three entries into the port (including the entry on which the payment was made) during the said period of thirty days. In calculating the expiration of the period of exemption in respect of Coasting vessels, the day of payment should be reckoned as one of the 30 days, and the day of entry should be reckoned as the day, whether the dues are actually paid on the day of entry or subsequently, and the date on which the liability to dues is based is that date on which the vessel passes the geographical limits of the Port.

4. For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the Remarks column of its International Tonnage certificate will be taken to be its gross tonnage for the purpose of levying Port Dues.

5. Vessels entering the port and taking in only provisions, water, bunker coal or liquid fuel for their own consumption shall be charged Port Dues at half rates.

6. A vessel entering port in ballast and not carrying passengers but leaving the Port laden shall be charged with only 75 % of the Port Dues with which she would otherwise be chargeable.

7. A vessel entering port but not discharging or taking in any cargo or passenger therein shall be charged with only 50 % of the Port Dues with which she would otherwise be chargeable.

8. A vessel landing a passenger at port without anchoring and proceeding on her voyage is not liable to Port Dues.

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B. PILOTAGE-CUM-TOWAGE FEES

The fees leviable for piloting vessels in and out of the harbour includes services of the Ports Pilot, required number of tugs and launches and mooring crew. The rate specified below is inclusive of one inward and one outward movement and shifting of vessels for Port convenience

Coastal Vessels (per GT) (in Rupees)	Foreign vessels (per GT) (in USD)
19.04 Minimum charges payable 35,200/-	0.656 Minimum charges payable 1200

Note:

(a) For inward / outward / shifting/ warping, the charges are as following

Sl. No.	Services	Operations	
		Hot Move	Cold Move
1	Inward Pilotage	50%	100%
2	Outward Pilotage	50%	100%
3	Shifting Pilotage	50%	100%
4	Warping	Rs.12,080/- for Costal vessels USD 412 for Foreign vessels	

The above percentage of charges shall be applied on the rates shown under Pilotage and towage fees.

(b) For this purpose, turning round of a vessel within the berth is also considered as a shifting.

(c) Pilotage will not be compulsory in case of vessels upto 200 GT. Such vessels may, however, ask for Pilot if they so desire on payment of fees as specified in the Schedule of Pilotage fees.

Pilot detention Charges

If the vessel is not able to move/cast off from the berth within 30 minutes of Pilot boarding due to any fault on the part of the vessel, the vessel is liable to pay an additional charge at the rate of 143 USD (Rs. 4,192/- for coastal vessels) per hour or part thereof, beyond thirty minutes till the vessel moves / vacates

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Pilot cancellation charges

If the movement of the vessel is cancelled after Pilot boarding due to any fault on the part of the vessel, a cancellation charge of USD 286 (Rs. 8,384/- for coastal vessels) will be levied.

In case a vessel is not ready for sailing as scheduled as per the unberthing request, she must inform the Port Signal Station over VHF at least 2 hours before the schedule time for cancellation of pilot. A vessel not able to cancel pilot booking at least 2 hours before the schedule time shall be liable to pay 143 USD, for coastal vessels Rs. 4,192/-

C. BERTH HIRE CHARGES

Coal berths (CB1 and CB2), General Cargo Berth and Finger Jetties

Rate per Gross Tonnage per hour or part thereof	
Coastal Vessel (in Rs.)	Foreign vessel (in USD)
0.22 (minimum Rs. 296/- per Hour)	0.010 (minimum USD 10.8 per Hr)

The vessel should be ready for sailing in all respects within 2 hours of completion of her cargo work. The information regarding the time of her readiness to sail shall be communicated to the Port Signal Station over VHF by the vessel and hoisting of 'G' flag at least 1 hour in advance. A vessel which is not ready to sail after 2 hours of completion of cargo work is liable to pay additional berth hire charges at the rate of 100% of the normal berth hire charges per hour or part thereof. The duration for which additional berth hire is to be charged will be calculated from the time of expiry of 2 hours from completion of cargo work to the time the vessel is ready for sailing.

For a vessel which is ready to sail in all respect but could not sail due to port operational requirements, berth hire charges will cease after 2 hours of vessel's readiness to sail.

D. Vessel Related Charges applicable for Pure Car Carriers only calling at General Cargo Berth:

Sl.No	Vessel Related Charges for Pure Car Carriers vessels	Unit	Tariff (Rates in USD)
1	Port Dues	GT	0.34
2.	Pilotage	GT	0.525
3.	Berth Hire Charges	GT per hour	0.008

The base rate of vessel Related Charges will be revised on revision of Scale of Rates by KPL or any other authority as the case may be from time to time.

Note: Any vessel which continues to occupy berth after the expiry of the time indicated in the notice served on the vessel to vacate the berth (notice of which had been given at least 12 hours in advance) shall pay additional berth hire charges at the following rates. The time to be calculated from the expiry of the notice period till the vessel vacates the berth

1. For the first two days - At four times the rate of the berth hire charges for authorized occupation
2. For third day and for subsequent days - At six times the rate of berth hire charges for authorized occupation
3. The additional berth hire charges shall be in addition to normal berth hire charges payable under the schedule
4. Vessels double banked with another vessel occupying a berth, will be charged two-third (2/3) of the berth hire charges specified above
5. Rate at anchorage at port basin or mooring berth or the vessel at mooring inside the basin will be half the rate as per above Schedule

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4. CARGO RELATED CHARGES

WHARFAGE

S. No.	Nomenclature	Unit	Rate
1	Coal & Coke	1 Tonne	Rs.130.00
2.	Cars and other automobiles	Ad valorem	0.40%
3.	Machinery Items	Ad valorem	Foreign – 0.22% Coastal – 0.13%
4.	Timber Logs	Cubic Meter	Foreign - 25.30 % Coastal – 15.18%
5.	Other Goods	1 Tonne	Rs.60.00
6.	Other Goods	Ad valorem	0.5%

Note:

Ad valorem Levy:- The percentage rate of 'Ad valorem' unit shall be as follows:

(a) **Goods imported**:- The percentage levy shall be on C.I.F value as assessed by Customs for Import goods.

(b) **Goods exported**:- The percentage levy shall be on F.O.B value as assessed by Customs for Export goods.

(c) **Coastal goods**:- The value to be taken for Ad valorem levy shall be given in the Coastal Bill of Lading/Invoice.

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Demurrage Charges:To levy the demurrage charges for automobile units as set out below :

Days	Charges per vehicle per day or part of the day	Remarks
Upto 15 Days	Free	The date of automobile entry into port and the date of export of automobile units will not be counted for levying of demurring Charges.
16 to 20 days	Rs.24/-	
21 to 25 days	Rs.48/-	
26 to 30 days	Rs.72/-	
Beyond 30 days	Rs.96/-	

Wharfage for handling transshipment of automobile units & cargo and demurrage charges:

S.No.	Transshipment Tariff	Rs. Per Car/per Movement
1.	Cars up to 1400 CC	Rs.1,100/-
2.	Cars above 1400 cc	Rs.1,500/-
3.	Van/ SUV	Rs.3,000/-
4.	Bus/ Truck and Heavy vehicles	Rs.4,500/-

Transshipment Demurrage Charges:-

Further, free time of 20 days is allowed for storing the transshipment cargo. This excludes the customs notified holidays and Port non-working days. Beyond the period, the demurrage charges shall be recovered.

Transshipment Demurrage Charges (Automobile Units)

Days	Charge per vehicle per day Or part of the day
Upto 20	Nil
21 - 25	Rs.24/-
26 - 30	Rs.48/-
Beyond 30	Rs.96/-

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Demurrage charges for the timber logs:

Days	Charges payable per Wharfage unit (per cubic meter)per day or part thereof
Upto 7 days	Free
8 to 15 days	Rs.13/-
16 to 25 days	Rs.26/-
26 to 56 days	Rs.39/-
Thereafter	Rs.65/-

Terms and conditions for Wharfage

In respect of Bulk cargoes the dues shall be recovered on the manifested tonnage.

If any question arises as to the classification of any goods, it shall be referred to the Board of Directors for decision and the Board shall decide the question, which shall be final.

On packages containing articles of miscellaneous character, charges shall be levied at the rate applicable to the articles on which the highest rate is chargeable.

In case of goods not otherwise specified where the value of the cargo is not available or could not be assessed the wharfage levy will be on weight-tonne basis at the above- mentioned rate

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5. HIRE CHARGES FOR PORT CRAFTS

For hiring the Port crafts, the following charges will be applicable –

Craft	Rate per hour	
Tug	18,120/-	394
Pilot Launch	4,320/-	94
Mooring Launch	1,920/-	42

Note:

(i) The hire charges will be for a minimum period of 30 minutes

(ii) Above 30 minutes of utilization of craft, hire charge will be calculated on pro-rata basis rounded off to next 10 minutes

(iii) The duration will be calculated from the time of casting off the jetty to the time of arrival back to the jetty

6. Miscellaneous charges:

S.No.	Description	Coastal vessel (in Rs.)	Foreign vessel (USD)
1	Use of mooring gang per mooring / unmooring operation not covered under Pilotage	2,760/-	60
2	Bollard pull test (each operation)	25,000/-	544

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SCALE OF LICENSE FEE FOR ALLOTMENT OF SPACE & WAY LEAVE CHARGES

Scale of License Fee for allotment of space under Monthly License and Annual License for Port related purpose

Item No	Description of Space	Unit	License Fee
1	Way Leave Charges *(with effect from Calendar year 2011)* a. For Pipelines of 8" dia and above b. For pipelines lesser than 8" dia	Per running meter or part thereof Per running meter or part thereof	Rs. 104/- per Calendar year or part thereof Rs. 52/- per Calendar year or part thereof
2	Ground Rent (*) Open Space Open Space (Hardened area)	Per Sq.m. or part thereof Per Sq.m. or part thereof	*Rs. 20/- per Calendar month or part thereof *Rs. 40/- per Calendar month or part thereof
3	Building allotted for use as office accommodation (*) Building with RCC roof and terrace within the Port Premises Buildings with ACC sheet and in other similar roof like GIC within the Port	Per Sq.m or part Thereof - do -	*Rs.100/-per calender month or part thereof *Rs.75/-per calender month or part thereof
4	Covered Space for use as site stores, equipment maintenance, etc., (*)	Per Sq.m or part thereof	*Rs.40/-per calender month or part thereof

*The above rates are effective from 1st April 2004 and escalation @ 5% compoundable per annum.

*The Port shall have an option to re-fix the base license fee every five years.

POLICY OF ALLOTMENT:

1. Applications for the allotment of space should be made in writing by the Port Users / Institutions connected with Port related activities addressed to the Director (Operations)
2. The space will be allotted under Monthly License if the period is upto 11 months or under Annual License if the period is more than one year but less than three years.
3. It shall be in the KPL's discretion to allot or refuse to allot space on terms of License.

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Conditions of Licensing of Space by KPL under Monthly License for a period upto eleven months

1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for one month in advance in case of allotment under monthly License as Security Deposit, which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the Licensor without any arrears. If there is any arrears of License fee, or any other amount due to the licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the Scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i.e.,) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc., if provided to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee.
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license.
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent local authorities and obtain all statutory clearances as may be required by law including environmental clearances.
9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL.
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary.
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.

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13. Encroachment or unauthorised occupation of the KPL's land and stacking of cargo on the KPL's land and stacking of cargo on the KPL's Railway tracks, plants, equipment, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed.
14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid.
16. Not to sublet or underlet, transfer or mortgage, assign to or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.
17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.
18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.
19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever.
20. If the licensee shall make default in payment of the whole or any part of the said monthly license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then

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and in any of such events it shall be lawful for the licensor at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and re-possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained.

21. If there shall be any license fee due and owing to the licensor at the time of such re- entry and the licensee shall fail to pay the same on demand it shall be lawful for the licensor to distrain upon any monies which may have been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises.
22. The License shall not be automatically renewable. If the Licensee requires to renew the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made seven days before the expiry of the license period. If the licensee likes to renew beyond eleven months, the conditions applicable for Annual License for a period of one year and above, but less than three years shall automatically apply, such as the licensee shall pay License Fee for three months in advance as Security Deposit.

23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.
24. The Licensees shall vacate the space occupied by them if the license is not renewed. The monthly license shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition, the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.
25. No compensation shall be payable by the Port in the event of refusal to renew the lease.

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26. The KPL shall have the right to terminate the License at any time by giving seven days notice and resume possession of space allotted. No compensation will be paid in this regard by KPL.
27. Any change in the constitution of the licensee firm or business shall in no way affect the terms of the license.
28. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur.

Conditions of Licensing of Space by KPL under Annual License for a period of one year and above, but less than three years

1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for 3 months in case of allotment under Annual License for 1 year and above but less than 3 years as Security Deposit which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the licensor without any arrears. If there is any arrears of License fee, or any other amount due to the licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i.e.,) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc. if provided, to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee.
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license.
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent statutory authorities or the Inspector of Explosives, Department of Explosives, Government of India or whomsoever concerned in relation to the storage of the goods under the monthly license.

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9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL.
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary.
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.
13. Encroachment or unauthorized occupation of the KPL's land and stacking of cargo on the KPL's land and stacking of cargo on the KPL's Railway tracks, plants, equipment, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed.
14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid.
16. Not to sublet or underlet, transfer or mortgage, assign to or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.
17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.
18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.

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19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever.

20. If the licensee shall make default in payment of the whole or any part of the license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then and in any of such events it shall be lawful for the licensor at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and re-possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained

21. If there shall be any license fee due and owing to the licensor at the time of such re- entry and the licensee shall fail to pay the same on demand it shall be lawful for the licensor to distrain upon any monies which may have been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises

22. Annual License and License below three years shall not be renewed automatically. If the Licensee requires to renewal of the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made two months before the expiry of the license period.

23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.

24. The Licensees shall vacate the space occupied by them if the license is not renewed. The Annual License shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition,

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the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.

25. No compensation shall be payable by the Port in the event of refusal to renew the lease.
26. The KPL shall have the right to terminate the License at any time by giving one- month notice in case of Annual License and resume possession of space allotted. No compensation will be paid in this regard by KPL

27. In the event of the license being terminated by the licensee by giving the required notice within the period of the first year of the license to make good the difference in the license fee between the rate of license fee per square metre allotted or part thereof per calendar month or part thereof leviable for occupation for a period less than one year and license fee per square metre allotted or part thereof per calendar month or part thereof mentioned in the license, from the date of commencement of the license to the date of vacation of the space allotted
28. Any change in the constitution of the licensee firm or business shall in no way affect the terms of the license
29. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur

Additional General Conditions in respect of Covered Space (Warehouse) and Covered Space other than warehouse

The licensees shall be liable for the following

1. To the said license fee being revised in accordance with the amendments to the KPL's Scale of Rates from time to time, affecting the rates of license fee laid down in the said Scale.
2. To pay the said license fee herein before reserved or the revised license fee under Clause (3) &(4)in Scale of License Fee, as the case may be, from the date of allotment of space and shall be remitted for each calendar month in advance
3. To pay in addition to the license fee stipulated above, the charges of water and electricity consumed every month at the rates fixed by the KPL from time to time, together with the installation and maintenance charges on electrical installations every month as may be fixed by the licensor from time to time.
4. To keep the doors of the premises locked and secured outside the working hours laid down by the KPL
5. To yield up the said premises at the determination of the license in goods and tenantable repair
6. Not to use the premises as Private Bonded area without prior permission from the KPL and in the event of premises being used as Private Bonded

area higher rate of license fee as may be fixed from time to time shall be payable by the licensee. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL

7. In the event of the licensor giving the licensee notice to terminate the license, the licensor shall not be bound to pay any compensation whatsoever
8. The licensee shall not at any time during the currency of the license put up any construction over the land licensed to him except with the written permission in writing of the licensor
9. If the licensee puts up a construction without the written permission of the licensor the construction so put up shall become the property of the licensor and the licensee is not entitled to any compensation therefor
10. If the licensor does not require the construction so put by the licensee without the permission of the licensor, the licensee shall remove the construction at his cost and restore the property in as good a condition as it was at the time he was put in possession, within a reasonable time during the currency of the license failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee
11. If the licensee puts up a construction with the written permission of the licensor, the licensor shall have the option to possess the construction so put up and in case the licensor requires the construction, the licensor shall pay compensation to the licensee in a sum mutually agreed upon at the expiry of the license
12. If the licensor does not require the construction put up with the permission of the licensor or if the licensor and licensee fail to settle the quantum of compensation to be paid, the licensor is entitled to call upon the licensee to remove the construction so put up at his cost and restore the property in as good a condition as it was at the time the licensee was put in possession, within a reasonable time, failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee

Kamarajar Port Limited Chennai

Chennai International Bulk Terminal (P) Ltd. Chennai 600 006

ANNEXURES – I & II

RESPONSE TO THE QUERIES ON RFP DOCUMENT





Amendment No.2 to the Response to the queries of RFP Document for Development of Multi Cargo Terminal

Sl.No of Response to the Queries	Clause Reference	Query of the Applicant	Response to the Queries by EPL on 03.01.2014	Revised Response to the Queries by EPL on 17.01.2014
11) 56) 57)	Appendix-4-Project requirement, Cl.3, Pg.138 & 139 of DCA	From the given scope it can be understood that no railway facility has been planned for proposed development of multi cargo facility. Please clarify that is there any provision to bring the rail spur for the proposed development (in future), when concessionaire need to use it? Good road connectivity to NH -4 and NH - 5 is the key to attract steel and project cargoes to Ennore. The port may kindly elaborate the plans for improving the rail connectivity. Kindly elaborate the details of rail connectivity available and the future plans. Details of rail siding present and future may kindly be provided. We are of the opinion that the Port must establish a full length rail siding linked to the berth along with adequate backup cargo storage area for the same.	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide full-fledged railway yard with adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail evacuation infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for evacuation of the cargo through rail from the common rail infrastructure which is under consideration for development by EPL. Further holding yard-II already developed by EPL near coal and iron ore stack yard can be used for loading and unloading of cargoes identified for Multi cargo terminal.	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. EPL already planned to provide rail connectivity to the proposed Container Terminal which is adjacent to the proposed Multi cargo terminal. From the container rail connectivity, EPL will develop another spur line towards north for the Multi cargo terminal. The terminal operator has to make own arrangements for receipt and dispatch of cargoes identified in the Multi cargo terminal through the spur rail line which is under consideration for development by EPL. Further development of the receipt and dispatch yard, platforms, handling equipments etc., are the scope of the terminal operator and EPL will provide the required land for such developments as per prevailing Scale of Rates.

Annexure – II

Annexure-II

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
1.	Clause no 1.2.4, Pg.10, RFP	It has been mentioned that bidders is require to deposit a Bid Security of Rs. 3.02 Crore in the form of Bank Guarantee along with its Bid. It is our request that the amount of Bid Security (i.e. 3.02 Crore) shall be reduced to half from the current advised amount as per RFP document. Further, as per Model Request for Proposal documents for the Port Project. Bid Security amount shall be 1% of the project cost (which is worked out to be Rs. 1.51 Crore the Project)	RFP clause shall prevail.
2.	Article 9. Clause 9.1, Pg.50, DCA	Please clarify the payment structure of license fee, in terms of when the payment will start (from date of award of concession or date of commencement of operations, payment to be made as advance or at the end of the year etc.) Please provide the lease rental rates for the extent of land mentioned in this clause.	Refer Article 9.1 of DCA. License fee towards land rent to be paid in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession. The lease rent shall be as per the SOR of EPL which is subject to escalation & revision as per Land policy guidelines. The lease rent specified in the DCA is as on 1.1.2012 i.e. Rs. 79/- per sq.m. per annum for the area of 1,35,000 sq.m (270 x 500m). The amount shall be revised at the applicable rates as on the date of signing of Concession Agreement.
3.	Article 3.1 (a), Pg.31, DCA	As per, conditions Precedent, Furnishing of Management Contract is required. We understand that this point will not be applicable for the	Refer Clause 2.1.1.8 (a) of RFP for clarity.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Bidder who has O&M experience itself. Kindly advice.	
4	Article 8.2, Pg.60, DCA	Kindly advice what is the Infrastructure Cess which is to be collected from users by Concessionaire on behalf of the Concessioning Authority?	DCA clause shall prevail.
		What will be the basis method and working of such infrastructure cess?	The modalities of Infrastructure cess, if any, shall be mutually discussed and decided.
5.	Article 9.1, P.62, DCA	The licence fee amount has been stated Rs.1,06,65,000/- per annum. Kindly provide us the calculation of the same.	The lease rent shall be as per the SOR of EPL which is subject to escalation & revision as per Land policy guidelines. The lease rent specified in the DCA is as on 1.1.2012 i.e. Rs. 79/- per sq.m. per annum for the area of 1,35,000 sq.m (270 x 500m). The amount shall be revised at the applicable rates as on the date of signing of Concession Agreement
6.	Appendix-1, Project site Cl.1, Pg.121 of DCA	It has been stated that "The terminal will start from the northern end of the iron ore berth". Please provide the exact co-ordinate of the project boundary.	PDF Drawing showing the proposed area/ land are given in Annexure-3
7.	Appendix-1, Project Site, Cl.2, P.121 of DCA	Please furnish the Autocad drawing of the proposed area / land where, development shall be done. Also please clarify that in case if additional power and water (other than available) for the terminal construction and operation if required, where will be the tapping point or sources of the same. Also please furnish the details of reliability of water availability from the nearest available water line.	Refer to Clause 7.2 of DCA regarding Utilities and services. "The concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. However, based on the availability of Water and on request, the Concessioning Authority

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Please furnish the quality of the water from the nearest available water line.	would provide during construction stage of the Terminal at the prescribed rates of EPL. The Concessionaire will make own arrangements for tapping the same from the main source and check the suitability of water for construction etc.
8.	Appendix-2, Port Assets Cl.2, Pg.123 of DCA	It has been stated that the Concessioning Authority shall provide the dredged depths in Berth pocket, approach and basin area. Please furnish the detail schedule of the dredging activity so that it can be synchronizing the jetty construction work with dredging work. Can dredging in berth pocket be done prior to jetty construction?	EPL will provide the dredged depth alongside the berth at (-) 16m CD. The dredging will be carried out in synchronization with the construction of berth.
9.	Appendix-4, Project requirement, Pg.138 of DCA	It has been stated that "The existing electrical cables and water pipelines shall not be damaged while developing the facilities. The damage so caused if any shall be rectified and made good by concessionaire as it cost." In this regard please clarify that what mitigation measures port authority has took in case, if any maintenance and repairing work is required to be carried out for these electrical cable and pipeline during the time when the yard is in operational phase? How much concessionaire will get compensation due to business loss and relaxation in MQT during this case?	It is a hypothetical situation which will be dealt with suitably on occurrence if any.
10.	Appendix-4-Project requirement,	The list of the equipments has been shown in this section to handle the 2.0 MMTPA multi cargos in accordance with the performance standards.	Equipment referred in Appendix-4 of DCA is the minimum requirement to be provided by the Concessionaire. The Concessionaire may augment

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
	Cl.3, Pg.138 of DCA	Authority to please clarify that whether bidder can alter scheme and requirement of the equipment to match the project requirement or change the type of equipment to meet the project requirement?	the said equipments to increase the productivity / efficiency of the Terminal, without affecting the quoted royalty (revenue share) payments.
11.	Appendix-4-Project requirement, Cl.3, Pg.138 & 139 of DCA	From the given scope it can be understood that no railway facility has been planned for proposed development of multi cargo facility. Please clarify that is there any provision to bring the rail spur for the proposed development (in future), when concessionaire need to use it?	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide full-fledged railway yard with adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Wey plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013. It is scheduled to complete this rail evacuation infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for evacuation of the cargo through rail from the common rail infrastructure which is under consideration for development by EPL. Further holding yard-II already developed by EPL near coal and iron ore stack yard can be used for loading and unloading of cargoes identified for Multi cargo terminal.
12.	Appendix-8-Permits and clearances,	It has been stated that Concessioning Authority has to obtain the Environmental Clearance from the MoEP. Please	EPL will provide a copy of Environmental clearance to the successful bidder.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
	Cl.2, Pg.152 of DCA	furnish the copy of the same.	
13.	Chapter-2, Ennore Port, P.4 of PFR	Figure 2-1, Layout of port master plan is not visible. Please provide same in Auto CAD format in co-ordinate system so that interface with other terminal / existing structures can be identified.	Drawings in PDF format is enclosed as Annexure-3.
14.	Chapter-4, Technical details, Pg.19 of PFR	Figure 4-1, Layout of Multi cargo Terminal is not visible. Please provide same in Auto CAD format in co-ordinate system so that interface with other terminal / existing structures can be identified.	The available drawings are enclosed as Annexure-4.
15.	Chapter-4, Technical details, Pg.20 of PFR	CWPRS Pune had conducted the model studies for the second stage development plan of Ennore port. Please provide the same.	The available documents are enclosed as Annexure-5.
16.	Chapter-4, Technical details, Pg.24 & 25 of PFR	Figure 4-2 and 4-3 shows subsurface profile of Marine bore holes. Please furnish the full report of subsoil investigation.	The available documents are enclosed as Annexure-6.
17.	General-Marine Studies	Please furnish the below listed studies carried out for the proposed development. • Sub Soil investigation report for offshore and on shore location • Topography of the proposed yard area	The available documents are enclosed as Annexure-6.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		• Hydraulic modelling studies (Wave and current)	
		• Ship manoeuvring / simulation study	
		• EIA study done for the proposed development	
18.	General-Marine Studies	Following are the general queries for utilities. • Provide the source and tapping point of Water for the proposed project with proper coordinate system in auto CAD format. • Provide the quantum of water available for the proposed project during construction period as well as during operation period.	"The concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. However, based on the availability of Water and Power, on request, the Concessioning Authority would provide during construction stage of the Terminal at the prescribed rates of EPL. The Concessionaire will make own arrangements for tapping the same from the main source and check the suitability of water for construction etc.
		• Please mention the type of the Sewerage disposal system inside the port. Also please clarify that septic tank with soak pit will be allowed for buildings? Or is there any provision of existing SW/ ETP in the port to accommodate sewage generated from the proposed facility.	Concessionaire has to make his own study / arrangements to comply various statutory requirements.
		• Given documents do not mention anything about fencing and compound wall. Please provide requirements of fencing and / or compound wall such as height, length, location, type and other specific requirement.	

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
19.	Electrical Works	Following are the general queries related to Electrical Works • List of equipments with rating in KW/HP and supply voltage • General arrangement of equipment layout AS per DCA , the power supply tap of point made available from TNEB common SS approx 5 km away from proposed port. but there is no any detailsof available supply voltage. Hence, request for provide the detailsof available supply voltage (66KV or 33KV) and confirm the proposed power supply requirement made available without any modification at supply(TNEB S/S) end. • Please clarify the requirement of substation (GIS) or switchyard (AIS) for the proposed project. • Please clarify that incoming power will be through underground cable or through over head transmission line.	As per Clause 7.2 of DCA, the concessionaire has to ascertain the same from the concerned authorities.
20.	Article 1.1 of DCA	Definition of Debt Due: The definition of Debt Due includes debt availed by the Concessionaire towards the Actual Project Cost of the Project. However, it does not include the debt which may be availed by the Concessionaire for funding the Additional	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Cost (i.e. the capital expenditure incurred by the Concessionaire as a result of change in law). As a result, such Additional Cost will not be taken into account while determining the termination payments under the Concession Agreement and will not be compensated by the Concessioning Authority ("Authority"). Therefore, it is suggested that the Additional Cost (to the extent that is not compensated by the Authority under the provisions of the Concession Agreement and against which facilities have been availed by the Concessionaire from the lenders) should be included while calculating the termination payments due to the Concessionaire on the Transfer Date. Necessary amendments should be made to the definition of Debt Due. The term Debt Due includes only those sums advanced by the Lenders towards the Actual Project Cost which are expressed in Indian rupees. Therefore, the said term does not include any financial facilities availed by the Concessionaire in foreign currency for funding the Actual Project Cost. It is therefore suggested that reference to	

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Indian rupees in the definition should be removed.	
21.	Article 2.8 of DCA	The Authority has warranted that the Concessionaire shall have peaceful occupation of the Project Site and Port's Assets and in the event the Concessionaire's peaceful occupation is obstructed by any claimsand proceedings, the Authority shall (if called upon by the Concessionaire) defend such claims and proceedings. The cost of such defence should be exclusively borne by the Authority. However, this Article is not clear on the aspect of bearing of such legal expenses and should be amended to provide that the Authority shall bear the cost of defending such claims and proceedings at its sole cost and expense.	DCA Clause shall prevail.
22.	Article 3.1 (a) 3.3, 3.5 & 3.6	Article 3.1(a) of the DCA sets forth the conditions precedent ("CPS") to be satisfied by the Concessionaire. Article 3.5 sets out the liquidated damages payable by the Concessionaire if it fails to achieve the CPs which are within the power of the Concessionaire. Therefore, for the purposes of levy of liquidated damages it appears that non fulfilment of CPs	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		which are not within the power of the Concessionaire is treated more favourably than the non fulfilment of CPs which are within the power of the Concessionaire. As per Article 3.6 of the DCA if the Concessionaire fails to fulfil the CPs within the timelines set out under the DCA, the Authority is entitled to terminate the DCA and forfeit the bid security. However, this Article does not categorise the CPs into the ones which are within the power of the Concessionaire and the ones which are not. It is therefore suggested that non fulfilment of CPs which are not within the power of the Concessionaire should be treated differently also in relation to Article 3.6 and before the Authority exercises its discretion to terminate the DCA, it should engage with the Concessionaire and agree on a reasonable extension. With respect to extension of time provided by the Authority under Article 33, there also has to be day to day extension of the time limit for achieving the CPs. Additionally the DCA should also provide for liquidated damages if the delay in achievement of the CPs is solely attributable to a delay or default of the Authority then there should not be any Liquidated Damages (LD) on	

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		concessionaire or termination of Agreement.	
23.	Article 6.4 of DCA	Article 6.4 (e) provides for inspection of Project site by the representatives of the Authority. Further, the representatives inspecting the Project Site and the construction work should strictly follow the safety standards and precautions applicable to the Project Site, failing which the Concessionaire shall not be responsible for any damage to life or property.	DCA Clause shall prevail.
24.	Article 6.7 of DCA	Article 6.7 (a) read with Article 6.7 (c): Article 6.7 (a) provides for testing of the Construction Work by the Independent Engineer so as to ensure that the work meets Construction Standards as provided under Appendix 7. Article 6.7 (c) provides that if the tests are successful, the Independent Engineer shall issue a Completion Certificate to the Concessionaire and the Authority. However, the said Article does not provide for a situation where the tests are not successful. It is therefore suggested that in the event the tests are not successful, the Concessionaire should be entitled to assess and identify the reason for such failure and remedy/rectify the Construction Works (at its cost and expense) and re-perform the concerned Tests. If upon such	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		re-test, the Construction Works conform to the Construction Standards, the Independent Engineer should issue the Completion Certificate. Article 6.7(e): Article 6.7(e) of the DCA provides that if the Construction Works are not completed due to (a) force majeure; or (b) reasons solely attributable to the Authority, the Authority may reduce the scope of the Project. However, the said Article further provides that in case of such reduction of scope, the Concessionaire will have to pay 80% of the sum saved due to such reduction of scope to the Authority. The rationale behind sharing of savings on construction works with the Authority is not clear because (a) the reduction of scope of the Project is due to reasons not attributable to the Concessionaire; and (b) other than payment of license fee and royalty (which is linked to the revenues of the Concessionaire), there are no other regular payment obligations on the	
25	Article 6.8	Article 6.8 (c): Article 6.8 deals with change of scope of the Project. If the Concessionaire receives notice from the Authority for	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		change of scope, the Concessionaire is required to provide (a) details of the adverse impact of such change on the Project; and (b) the estimate of cost be incurred. It is important that in addition to these two considerations, the Authority should also consider the time which may be required to complete the new scope of work. It is therefore suggested that the Concessionaire should also suggest the estimated time of carrying out of such change of scope and the Authority should upfront agree on such timelines and if need to be consider an extension to the Concession Period. Article 6.8 (d) and (g): The assets created pursuant to the change of Scope (whether under the provisions of Article 6.8 (a) to (d) or Article 6.8 (g) (i.e through competitive bidding)) should also form part of the concession. If the Change of Scope is proposed to be undertaken through the competitive bidding route, the new contractor should have the obligation to perform its scope of work in a manner that it does not disturb the performance of the Concessionaire's work. Article 6.8 (h): Under the provisions of Article 6.8 (h), the Concessionaire	

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		can propose Change of Scope if in its opinion such changes is necessary for providing safer and / or improved Project Facilities and Services. As per the said Article, the pecuniary limitations on the cost of implementing the Change of Scope (both single and cumulative) as set out in Article 6.8 (a) are also applicable to the change suggested by the Concessionaire. It is suggested that the limits under Article 6.8 (a) should not be applicable to the change of change of scope proposed by the Concessionaire, particularly when the Authority has complete discretion in accepting or rejecting such suggestions.	
26.	Article 6.9	Article 6.9 deals with the levy of liquidated damages for delay in achievement of Milestones. In relation to the achievement of COD, if the Concessionaire fails to achieve any relevant milestones but achieves the COD within the overall time frame, then no liquidated damages should be payable. Therefore, the liquidated damages for the failure to achieve the COD should be payable only after the scheduled commercial operation date.	DCA Clause shall prevail.
27.	Article 7.1	7.1 (a) (xiii): Article 7.1 (a) (xiii) requires the Concessionaire to defend and indemnity the Authority against any action by any third party alleging loss, destruction or deterioration of the goods	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		of which charge has been taken by the Concessionaire. In the event the Concessionaire so defends and indemnifies the Authority, it should have the ability to compromise or settle such actions without requiring prior consent of the Authority / indemnities so long as such compromise or settlement does not prejudicially affect the Authority, financially or otherwise.	
28.	Article 7.1	Article 7.1 (c) : A new sub-clause 7.1 (c) (iii) should be added where under the Authority should undertake to perform / comply with its obligations under the applicable laws including the Major Port Trusts Act, 1963, to the extent the Authority is in breach / non – compliance with such obligations, it should defend, indemnify and hold the Concessionaire harmless against any losses, damages or liabilities incurred by the Concessionaire due to such breach / non – compliance.	DCA Clause shall prevail.
29.	Article 9.4	Article 9.4 entitles the Authority to have conducted a Special Audit of the Gross Revenue and the financial records of the Concessionaire through an Additional Auditor. The Article also provides that if the Gross Revenue as reported by the Additional Auditor is more than that reported by the Statutory Auditor, both the auditors shall meet to resolve the difference, failing which the	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Concessionaire shall pay the Royalty based on the Gross Revenue reported by the Additional Auditor. This provision is onerous on the Concessionaire and it is therefore suggested that in case of failure of the auditors to resolve such difference, such difference should be resolved by the Parties in accordance with the dispute settlement mechanism provided under Article 19. On a related note, the Authority should bear all the cost incurred for conducting Special Audit.	
30.	Article 12.1 (d)	Article 12.1(d) provides for indemnification from the Concessionaire. It is suggested that the said Article should also have a reciprocal indemnity from the Authority, indemnifying the Concessionaire from all loss, damages, penalties liabilities, etc. incurred by the Concessionaire as a result of any (a) breach of Article 2.8 (i.e. Peaceful Occupation); (b) breach / non – compliance of applicable Permits and applicable laws by the Authority, including but not limited to the breach of provisions of the MPT Act.	DCA Clause shall prevail.
31.	Article 12.3(b)(iii)	Article 12.3(b)(iii) sets out confidentiality obligations on the Parties. However, such obligations should not be applicable to information which was (a) available in public domain prior to the disclosure by a party to another; or (b) already in the knowledge of the receiving party; or (c) obtained from	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		a third part who had no binder of secrecy in relation to such information ; or (d) independently developed by a party. The said Article entitles a party to disclose such confidential information to its legal advisors or auditors on a need to know basis. This disclosure should be allowed subject to such persons agreeing to be bound by the same confidentiality obligations applicable to the parties under the Concession Agreement.	
32.	Article 13.1	Article 13.1 defines Change in Law in the Context of adoption, reinterpretation, modification or repeal of any statute, rule, ordinance, order, treaty, directive, policy, etc. by a Government Authority It also includes Imposition of any material condition by a Government Authority in connection with the issuance, renewal or modification of any applicable permits. The term Government Authority does not include the courts and therefore, any judgements or orders which re-interpret the applicable law or deals with the constitutionality or otherwise of provisions of any applicable law does not amount to a change in law for the purposes of the DCA. It is therefore suggested that such judgements / orders of court which have Material Adverse Effect should also be	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		constructed to be change in law and the provisions of Article 13.2 [Concessionaire's Remedy] should be made applicable to such change in law.	
33.	Article 13.2	Article 13.2 deals with remedies available to the Concessionaire in case of Change in Law. As one of the remedies for a Change in Law which has an adverse implication on the Concessionaire (in the form of incurring of Additional cost.) the Authority can elect to bear such additional cost over and above a de minimis limit of Rs. 10.57 crores. However, on the contrary if the Concessionaire benefits from a Change in Law (in the form of reduction in costs or any other financial benefit or gain) wherein the financial benefit exceeds Rs.75 lakhs, it seems that the de minimis limit is not applicable and the Concessionaire is required to compensate the Authority for an amount that would put the Concessionaire in the same financial position had there been no such Change in Law;	DCA Clause shall prevail.
34.	Article 14	Article 14 deals with force Majeure. Article 14.3 of the DCA sets out the political force majeure events, one of which is early determination of the concession agreement by the Authority for reasons of	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		national emergency, national security or public interest. In the event the concession agreement is terminated by the Authority on the aforesaid grounds, the provisions of Articles 16 (Termination of the Concession) and 17 (Compensation) shall automatically become applicable and such determination shall no longer be a force majeure event. Therefore, Article 14.3 (c) may be deleted.	
35.	Article 14.10	As per article 14.10, if a force majeure is likely to continue beyond 120 days, the parties may mutually decide to terminate the agreement or chose to continue with the agreement on such revised terms as may be mutually agreed. The time period of 120 days is too short and should be increased to at least 180 days.	DCA Clause shall prevail.
36.	Article 15.1 (b)	Article 15.1 (b) lists out the events of default attributable to the Authority. It suggested that in addition to the events of default set out in the said Article, any failure, breach or non – compliance of the Authority with the provisions of Applicable Laws and / or Applicable Permits should also be included as one of Authority's events of default.	DCA Clause shall prevail.
37.	Article 15.3 & Article 15.4	As per Article 15.3 of the DCA, in case of occurrence of an event of default, the non – defaulting party is required to issue a notice to the other party proposing consultation amongst the parties and the lenders for exploring possible	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		measures of curing such default. As per Article 15.4, the consultation process is required to be carried on for a period not exceeding 90 days. However, in case of Concessionaire Event of Default, the Authority shall in consultation with the lenders endeavour to arrive at an agreement on appropriate measures to cure the defect, which include among others change in management or control / ownership of the Concessionaire or replacement of the Concessionaire by a new operator. Article 15.4 does not allow any cure period to the Concessionaire for remedying the default and directly provides for a consultation process among the parties and the lenders which may even lead to change in management / control / ownership / substitution of the Concessionaire. It is therefore suggested that prior to the initiation of the Remedial Period and consultation with the lenders pursuant to the provisions of Article 15.4, the Concessionaire should be allowed a period of [at least 60 days] to cure the default. The Remedial Period should commence only if the Concessionaire fails to remedy the default within such agreed cure period.	
38.	Article 17.1 (b)	Article 17.1 (b) provides for the compensation which is payable to the Concessionaire pursuant to the termination	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		of the Concession Agreement occurring after the Date of Commercial Operation due to a Concessionaire Event of Default. It is suggested that the said compensation should be payable for such termination occurring from the date of Financial close instead of the Date of Commercial Operation. This consistent with the provisions of Article 16.3 which provides that no compensation shall be paid by the Authority if the Termination Notice is issued prior to the date of Financial Close (as the Concession is yet to come into effect)	
39.	Article 18.2	Article 18.2(d): Article 18.2(d) provides that on the Transfer Date, the Concessionaire shall transfer all the technology and knowhow relating to the operation and maintenance of the Port's Assets and / or Project Facilities and Services. In this context, it is suggested that any intellectual property right created and subsisting in the technology, knowhow and documents prepared by the Concessionaire in relation to the Project should be jointly owned by the Concessionaire and the Authority and each of the parties should have the right of unrestricted use of such intellectual property. The concessionaire should transfer physical copies of the	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		documents containing the details of such technology and knowhow to the Authority on the Transfer date.	
40.	Article 20.1 (a)	Article 20.1 (a) requires the Concessionaire to irrevocably waive any immunity in any jurisdiction in respect of the Concession Agreement, including any obligation, liability or responsibility thereunder. It is suggested that similar waiver should also be obtained from Authority.	DCA Clause shall prevail.
41.	Article 19	The Concession Agreement provides for appointment of experts for various purposes, which include among others, determination of tangible assets which should be taken over by the Authority (based on the capability of such assets for use by the Authority), determination of Change of Scope and / or cost of implementing the same and inspection of the Project facilities and services to verify they are performed in accordance with the Performance Standards. It is suggested that in all such cases the Expert should be appointed by the Parties by mutual consent. Further, under the provisions of Article 19.2 (Assistance of Expert). In case of any dispute which is not resolved amicably between the parties, the parties may agree to refer such matter to an Expert. It should be clarified in this Article that the Expert shall be appointed only for the purposes of making suggestions for amicable settlement	DCA Clause shall prevail.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		between the parties and its views shall not be binding on the parties.	
42.	Appendix 3	Definition of Financial Default under the Draft Substitution Agreement: A Financial Default (which leads to the substitution of the Concessionaire under the said agreement) under the substitution agreement is triggered upon the occurrence of material breach of the terms and conditions of the Financial Documents by the Concessionaire. It should be noted that the definition of Financial Default does not account for any cure period that the concessionaire may be entitled to under the Financing Documents for remedying such default. It is therefore suggested that the said definition should be amended such that a Financial Default under the Substitution Agreement occurs only if the Lenders finally determine that the default is such that requires the substitution of the Concessionaire.	DCA Clause shall prevail.
43.	Chapter 3 , DFR	It is requested that the details of cargo envisaged for the Project (i.e. Granite, Timber logs, Grains, Bagged cargoes including sugar, cobble stone, steel cargo and project cargo) handled at either Ennore or neighbouring ports to the bidders for understanding the cargo flow of the particular	The cargo flow envisaged for the project in the DFR is indicative only. The Bidder has to make his own study of cargo flow.

Annexure-II

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		commodity.	
44.	Chapter 3, DFR	It has been mentioned that in the Feasibility Report that the Grains are to be considered for the cargo to be handled at proposed Multi cargo terminal. Please clarify that the grains included all types of Grains and not limited to Maize and Wheat	Yes.
45.	Appendix II, DCA	It has been mentioned in the DCA that Concessioning Authority shall provide the depth of (-) 15m CD in the berth pocket at the time of operation of terminal. Kindly advice, in case of the Concessioning Authority is unable to provide the committed depth in channel and berth pocket as stated in the Draft Concession Agreement at the time of commencement of operation of the terminal, then what recourse will be provided to the BOT operator.	At the time of operation of terminal, EPL shall provide the dredged depth alongside the berth at (-) 16m CD instead of (-) 15m CD stated in Para 2 of Appendix-2 of DCA.s
46.	General	Whether the concessionaire is at liberty to establish the infrastructure / machineries other than those specified in the feasibility report for the effective operation, subject to the approval of EPL	Infrastructures / machineries specified in DFR and DCA are the minimum provisions to be established by the Concessionaire. The Concessionaire may augment the same with additional machineries to improve the productivity / efficiency, without affecting the quoted royalty (revenue share) payment.
47.	Appendix IV	Whether the concessionaire is allowed to operate with their	The concessionaire is expected to employ his own / labour.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		own labour and manpower.	
48.	Article 8	Reference Tariff	Refer Appendix 12 and Article 8 of DCA.
49.	Article 9	Rental and water front royalty and date of applicability i.e. on award of concession or commencement of operations	Refer Article 9.1 of DCA. License fee towards land rent to be paid in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession. The lease rent shall be as per the SOR of EPL which is subject to escalation & revision as per Land policy guidelines. The lease rent specified in the DCA is as on 1.1.2012 i.e. Rs. 79/- per sq.m. per annum for the area of 1,35,000 sq.m (270 x 500m). The amount shall be revised at the applicable rates as on the date of signing of Concession Agreement..
50.	Article 12	Whether exclusivity will be provided during the concession period	Refer Article 12.2(c) of DCA.
51.	RFP	We understand that the Draft concession agreement (original) supplied by EPL need to be initialed in all pages by the authorized signatory of the consortium. Nothing to be filled up in the agreement format, given as "Appendix-16", in the Concession agreement. In addition, a copy of the Concession agreement, duly signed in all the pages, by the authorized signatory should also be sent along with the Bid documents.	Refer RFP clause 2.11.2

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
52.	RFP	Is it necessary to submit the "Draft Feasibility report", duly signed	Refer RFP clause 2.11.2 and 2.1.3
53.	RFP	We understand that there is no "Technical proposal" need to be submitted, for this project. Only the Appendix I to V, along with Draft Concession agreement need to be submitted	During Bid submission, the Technical proposal need not be submitted. However, the successful bidder has to prepare and submit the DPR to Independent Engineer for approval as per Appendix-7 of DCA. The Bidder should submit all the documents specified in RFP clause 2.11.2.
54.	RFP	Whether the Bid security of Rs. 3.02 Crore in the form of BG need to be provided only by the Lead consortium member or by any of the consortium members	The BG has to be provided by the Lead Member. Refer RFP clauses 1.2.4, 2.1.7 and 2.20.
55.	General	As scope for handling Project cargo is high pl indicate as to how grain will be preferred as its dust is detrimental to such sensitive cargos. With existence of only 1 berth at MCT, all such general cargos have to be handled there only. Chennai port has a number of general cargo berths and the trade has a greater choice. It may therefore be clarified as to how the cargo will be attracted to Ennore port. Though the Coal and Ore terminal are mechanized, they are too near to the proposed MCT. For a good part of the year, winds are Southerly, directly impacting grain cargo.	The Multi cargo Berth is proposed to be developed and operated with the state of the art technology which does not cause pollution and thus may attract more EXIM trade. The cargo flow envisaged for the project in the DFR is indicative only. The Bidder has to make his own study of cargo flow. Please refer Clause 2.1.3 of RFP.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		Exporters may have reservations to using this berth for such reason. Kindly indicate as to how this problem will be tackled. Ennore Port VRC and Port charges are much higher than Chennai. Hence customers with only higher freight cargos will call on Ennore. In order to attract lower freight cargos like cobble stones, It is advisable to reduce the vessel related charges for general cargo to attract cargo from Chennai port.	
56		Good road connectivity to NH -4 and NH – 5 is the key to attract steel and project cargoes to Ennore. The port may kindly elaborate the plans for improving the rail connectivity. Kindly elaborate the details of rail connectivity available and the future plans. Details of rail siding present and future may kindly be provided.	A rail take-off point is already available inside the port by the western side of the proposed terminal which is connected to the Indian Railway mainlines. It is already been planned to provide full-fledged railway yard with adequate reception and dispatch line, loading and unloading line and engine escape lines. It is further noted that the key Permanent Way plan which is essential for building this rail infrastructure has already been approved by Southern Railway in November 2013.
57.		We are of the opinion that the Port must establish a full length rail siding linked to the berth along with adequate backup cargo storage area for the same.	It is scheduled to complete this rail evacuation infrastructure in synchronization with the operation of the terminal. The terminal operator has to make own arrangements for evacuation of the cargo through

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
			rail from the common rail infrastructure which is under consideration for development by EPL. Further holding yard-if already developed by EPL near coal and iron ore stack yard can be used for loading and unloading of cargoes identified for Multi cargo terminal.
58.		Because of worldwide economic slowdown, a growth rate 7.2 % in traffic is highly unlikely. This requires moderation. The project may not fetch the projected IRRs because of this reason.	The cargo flow and the growth rate envisaged for the project in the DFR is indicative only. The Bidder has to make his own study of cargo flow and growth rate. Please refer Clause 2.1.3 of RFP.
59.		In order to ascertain the site conditions, surroundings, location, etc. it is required that latest bathymetry survey charts drawings showing existing sea bed levels in jetty, berth pocket, guide bund and reclamation areas including available geotechnical information (boreholes, lab tests, wave climate, geophysics) available may kindly be provided.	Available documents are enclosed as Annexures-6.
60.		As per the norms laid down by TAMP, the tariffs are increased by 60% of the WPI. If an assumption is made that tariffs go up by 5 %, then the O&M costs should go up by 8.3%. This will reduce the IRR.	Refer Appendix 12 and Article 8 of DCA.
61.		Can the Concessionaire fix rates which are higher than the reference tariff? If not the rates mentioned appear to be on the lower side considering the fact that the cargo handling	Refer Article 8.1 and Appendix-12 of DCA.

Response to the queries of RFP Document for Development of Multi Cargo Terminal at Ennore Port on DBFOT basis

S#	Clause Reference	Query of the Applicant	Response by EPL
		charges are composite charge for unlashing of cargo, unloading of cargo from vessel, transportation to the point of storage, storage up to the free period and delivery.	
62.		Please furnish a copy of the Environmental clearance obtained. Please also indicate the period of validity of this clearance. If there is any requirement of greenery, port may kindly provide additional space for plantation.	EPL will provide a copy of Environmental clearance to the successful bidder.
63.		We request you to provide Autocad drawings for the Port Master Layout and layouts of Multi cargo Terminal. The drawings attached in Feasibility Report are not fully readable.	Drawings are enclosed as Annexure-3 (PDF) and Annexure-4 (Autocad).

INTEGRITY PACT

General

1. Whereas the Board of Directors of Kamarajar Port Limited (formally known as Ennore Port Limited,) hereinafter referred to as the Concessioning Authority and the first party, proposes to award Concession to **M/sChettinad International Bulk Terminal Private Limited** represented by its Director **Mr. KR. Narayanan** (which term, unless expressly indicated by the Contract / Concession Agreement, shall be deemed to include its successors and its assignees), hereinafter referred to as the Concessionaire and the second party, is willing to offer services.

2. **Whereas the Concessionaire is a Special Purpose Vehicle constituted in accordance with the relevant law in the matter and the Concessioning Authority is a Corporatized Major Port under the Ministry of Shipping, Government of India.**

Objectives:

3. Now, therefore, the Concessioning Authority and the Concessionaire agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

   3.1 Enabling the Concessioning Authority to obtain the desired services in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on port services, and

   3.2 Enabling the Concessionaire to abstain from bribing or any corrupt practice in order to secure the Contract / Concession Agreement by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Concessioning Authority will commit to prevent corruption, in any form, by their officials by following transparent procedures.

4. **Commitments of the Concessioning Authority**

   The Concessioning Authority Commits itself to the following:-

   4.1 The Concessioning Authority undertakes that no official of the Concessioning Authority, connected directly or indirectly with the Contract / Concession Agreement, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Concessionaire, either for

Kamarajar Port Limited Chennai

Chettinad International Bulk Terminal (P) Ltd. Chennai 600 095

themselves or for any person, organization or third party related to the Contract / Concession Agreementin exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract / ConcessionAgreement.

4.2 The Concessioning Authority will, during the pre-contract stage, treat all Concessionaires alike, and will provide to all Concessionaires the same information and will not provide any such information to any particular Concessionaire which could afford an advantage to that particular Concessionaire in comparison to other Applicants.

4.3 All the officials of the Concessioning Authority will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

5. In case of any such preceding misconduct on the part of such official(s) is reported by the Concessionaire to the Concessioning Authority with full and verifiable facts and the same is *prima facie* found to be correct by the Concessioning Authority, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Concessioning Authority and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Concessioning Authority the proceedings under the Contract / Concession Agreement would not be stalled.

6. **Commitments of Concessionaire**

The Concessionaire commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract / ConcessionAgreement stage in order to secure the Contract / Concession Agreementor in furtherance to secure it and in particular commits himself to the following:-

6.1 The Concessionaire will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Concessioning Authority, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the Contract / Concession Agreementin exchange for any advantage in the bidding,

evaluation, contracting and implementation of the Contract / Concession Agreement.

6.2 The Concessionaire further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Concessioning Authority or otherwise in procuring the Contract / Concession Agreement or forbearing to do or having done any act in relation to the obtaining or execution of the Contract / Concession Agreementor any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract / Concession Agreement or any other Contract with the Government

6.3 The Concessionaire will not collude with other parties interested in the Contract / ConcessionAgreement to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the Contract / Concession Agreement.

6.4 The Concessionaire will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

6.5 The Concessionaire, either while presenting the bid or during pre-contractnegotiations or before signing the Contract / Concession Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the Concessioning Authority or their family members, agents, brokers or any other intermediaries in connection with the Contract / Concession Agreement and the details of services agreed upon for such payments.

6.6 The Concessionaire shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Concessioning Authority as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Concessionaire also undertakes to exercise due and adequate care lest any such information is divulged.

6.7 The Concessionaire commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts

6.8 The Concessionaire shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression

7.1 The Concessionaire declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Concessionaire's exclusion from the tender process.

7.2 If the Concessionaire makes incorrect statement on this subject, Concessionaire can be disqualified from the tender process or the Contract / Concession Agreement, if already awarded, can be terminated for such reason.

8. Earnest Money / Security Deposit

8.1. Every Concessionaire, while submitting commercial bid, shall deposit an amount[1] as specified in the RFP as Earnest Money / Security Deposit, with the Concessioning Authority through any of the following instruments.

(i) The concessionaire shall furnish as part of its Bid, a certified true copy (signed by a Director) of the Bid Security herein above in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore, in favour of the Authority in the format at Appendix – II (the "**BankGuarantee**") and having a validity period of not less than 180 days from the BidDue Date, as may be extended by the concessionaire from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

(ii) Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Chennai (the "**Demand Draft**").The Authority shall not be liable to pay any interest on the Bid Securitydeposit so made and the same shall be interest free.

[1]The concessionaire shall deposit a Bid Security of the Rs. 3.02 crore (Rupees Three crore and two lakhs only) in accordance with the provisions of this RFP. The concessionaire has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee, acceptable to the Authority.

(iii) Any other mode or through any other instrument, as stated in RFP.

8.2. The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond / Performance Security in case of a decision by the Concessioning Authority to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.

8.3. No interest shall be payable by the Concessioning Authority to the Concessionaire(s) on Earnest Money / Security Deposit / Performance Security for the period of its currency.

9. Company Code of Conduct

9.1 The Concessionaireis advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour) and a compliance program for the implementation of the code of conduct throughout the company.

10. Sanctions for Violation

10.1 Any breach of the aforesaid provisions by the Concessionaire or any one employed by him or acting on his behalf (whether with or without the knowledge of the Concessionaire) or the commission of any offence by the Concessionaire or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Concessioning Authority to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Concessionaire. However, the proceedings with the other Concessionaire(s) would continue.

(ii) The Earnest Money / Security Deposit / Performance Bond / Performance Security shall stand forfeited either fully or partially, as decided by the Concessioning Authority and the Concessioning Authority shall not be required to assign any reason therefore.

(iii) To immediately cancel the Contract / Concession Agreement, if already signed, without giving any compensation to the Concessionaire.

(iv) To recover all sums already paid by the Concessioning Authority, and in case of an Indian Concessionaire with interest thereon at 2% higher than the prevailingPrime Lending Rate, while in case of a Concessionaire from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Concessioning Authority from the Concessionaire in connection with any other contract, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance Bank Guarantee and Performance Bond / Performance Security, if furnished by the Concessionaire, in order to recover the payments, already made by the Concessioning Authority, along with interest.

(vi) To cancel all or any other Contracts / Concession Agreements with the Concessionaire.

(vii) To debar the Concessionaire from entering into any bid from any of the Major Ports in India for a minimum period of five years, which may be further extended at the discretion of the Concessioning Authority.

(viii) To recover all sums paid in violation of this Pact by Concessionaire to any middleman or agent or broker with a view to securing the contract / Concession Agreement.

(ix) If the Concessionaire or any employee of the Concessionaire or any person acting on behalf of the Concessionaire, either directly or indirectly, is closely related to any of the officers of the Concessioning Authority, or alternatively, if any close relative of an officer of the Concessioning Authority has financial interest/stake in the Concessionaire's firm, the same shall be disclosed by the Concessionaire at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Concessioning Authority to rescind the Contract / Concession Agreement without payment of any compensation to the Concessionaire.The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any

other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife orhusband and wholly dependent upon Government servant.

(x) The Concessionaire shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Concessioning Authority, and if he does so, the Concessioning Authority shall be entitled forthwith to rescind the Contract / Concession Agreementand all other Contracts / Concession Agreements with the Concessionaire. The Concessionaire shall be liable to pay compensation for any loss or damage to the Concessioning Authority resulting from such rescission and the Concessioning Authority shall be entitled to deduct the amount so payable from the money(s) due to the Concessionaire.

(xi) In cases where irrevocable Letters of Credit have been received in respect of any Contract / Concession Agreementsigned by the Concessioning Authority with the Concessionaire, the same shall not be opened.

10.2 The decision of the Concessioning Authority to the effect that a breach of the provisions of this Integrity Pact has been committed by the Concessionaire shall be final and binding on the Concessionaire, however, the Concessionaire can approach the monitor(s) appointed for the purposes of this Pact.

11. Fall Clause

11.1 The Concessionaire shall strive to accord the most favoured customer treatment to the Concessioning Authority in respect of all matters pertaining to the present case.

12. Independent Monitor

12.1 The Concessioning Authority will appoint Independent Monitor for this Pact, in consultation with the Central Vigilance Commission.

12.2 The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

12.3 The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. It will be obligatory for him to treat the information and documents of the Concessionaire as confidential.

12.4 The Concessionaire accepts that the Monitor has the right to access without restriction to all Project documentation of the Concessionaire. The Concessionaire will also grant

the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to this project documentation. The same is applicable to the Concessionaire's contractors. The Monitor is under contractual obligation to treat the information and documents with confidentiality.

12.5 The Concessioning Authority will provide to the Monitor sufficient information about all meetings among the parties related to the project, provided such meetings could have an impact on the contractual relations between the Concessioning Authority and the Concessionaire. The parties offer to the Monitor the option to participate in such meetings.

12.6 As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform Chairman cum Managing Director of Kamarajar Port Limited, under Ministry of Shipping, Government of India.

12.7 The Monitor will submit a written report regularly to the Chairman cum Managing Director of Kamarajar Port Limited and should the occasion arise, submit proposals for correcting problematic situations.

12.8 If the monitor has reported to the Chairman cum Managing Director of Kamarajar Port Limited, a substantiated suspicion of an offence under Anti-Corruption Laws of India, and the Chairman cum Managing Director of Kamarajar Port Limited has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

12.9 The word "Monitor" would include both singular and plural.

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Concessioning Authority or its agencies shall be entitled to examine the Books of Accounts of the Concessionaire and the Concessionaire shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Concessioning Authority i.e. Chennai, Tamilnadu.

15. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. Validity

16.1 The validity of this Integrity Pact shall be from the date of its signing and extend up to 30 years or the complete execution of the Contract / Concession Agreement to the satisfaction of both the Concessioning Authority and the Concessionaire, whichever is later.

16.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

17. The Parties hereby sign this Integrity Pact at Chennai on 28.03.2014

CONCESSIONING AUTHORITY

DIRECTOR (OPERATIONS),
KAMARAJAR PORT LIMITED,
CHENNAI.

CONCESSIONAIRE

DIRECTOR,
CHETTINAD INTERNATIONAL
BULK TERMINAL PRIVATE LTD.

Witness

1. V. KRISHNASAMY, GM(Operations), Kamarajar Port Ltd, Chennai-120

2. V. Krishnan, Company Secretary CICTPL, No. 603, Anna Salai Chennai - 600006

KPL

CONCESSIONAIRE

CONCESSION AGREEMENT

BETWEEN

KAMARAJAR PORT LIMITED

(THE CONCESSIONING AUTHORITY)
AND

INDIAN OIL LNG PRIVATE LIMITED

(THE CONCESSIONAIRE)
FOR

DEVELOPMENT OF LNG TERMINAL AT KAMARAJAR PORT ON CAPTIVE USER BASIS



31st JULY 2015

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Chennai on this **31st day of July 2015**.

BETWEEN:

1. **M/s KAMARAJAR PORT LIMITED,** a company incorporated and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001, hereinafter referred to as **"the Concessioning Authority"** or as "**KPL**" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the FIRST PART;

AND

2. **M/s IndianOil LNG Pvt. Limited**, a company registered under the Companies Act, 1956, and having its registered office at IndianOil Bhawan, 139, Nungambakkam High Road, Chennai – 660034 hereinafter referred to as **"the Concessionaire" or as "IOLPL"**(which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns**)** of the OTHER PART**.**

WHEREAS:

(A) Union Cabinet in its meeting held on 9th May 2013 has approved allocation of land to the extent of 52.00 hectares at Kamarajar Port to the Joint Venture led by Indian Oil Corporation Limited (IOCL) for setting up of a LNG Import Terminal. Meanwhile, a joint venture company by name Indian Oil LNG Pvt. Limited (IOLPL) promoted by IOCL was set up and M/s IOCL had informed KPL that the newly set up company IOLPL would implement the proposed project.

(B) IOLPL is desirous of designing, engineering, procuring, constructing, developing, operating, maintaining, repairing and refurbishing a LNG Re-Gasification Terminal and related facilities, including a jetty for the use of the said LNG Re-Gasification Terminal, other marine facilities and carrying out the business of re-gasifying and selling gas and re-gasifying gas by tolling and executing other related ancillary activities and works within the port limits at Kamarajar Port.

(C) Pursuant to previous discussions between the Parties hereto, KPL has agreed to grant IOLPL a concession and related rights for the development, operation and maintenance of the LNG Port Project (as defined hereinafter).

(D) KPL allotted to IOLPL, 52.00 hectares of land inside Kamarajar Port premises on lease, with lease period upto the date of expiry of 30 (thirty) years commencing from the Date of Award of Concession, for LNG Re-Gasification Project, subject to the terms and conditions of a Land Lease Agreement as per Appendix 14 to be executed and registered pursuant to the Concessioning Authority getting the title of the land registered in its name in this regard by the Parties along with this Concession Agreement.

(E) The Parties are desirous of setting out their respective understandings as regards their mutual rights and obligations as regards the development, operation and maintenance of the LNG Port Project and related grant of concession and connected rights.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Actual Project Cost" means the actual capital cost incurred by the Concessionaire on the LNG Port Project and/or the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Port Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of the Estimated Port Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioning Authority.

"Additional Auditor" has the meaning ascribed to it in Article 9.4.

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

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

"Agreement" means this agreement as of date hereof, including Appendices 1 through 14 as may be amended, supplemented or modified in accordance with the provisions hereof.

"Appendix" means the schedules, supplements or documents, appended to this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances

and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

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

"Board" means the Board of Kamarajar Port Limited.

"Book Value" means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of: (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgment of an Expert are capable of being put to use/utilized by the Concessioning Authority, and (ii) the movable assets including LNG handling equipment belonging to the Concessionaire, which the Concessioning Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

"**Business Day**" means any day on which the banks are normally open for business at Ennore and **Chennai**.

"Certificate of Substantial Completion" means the Certificate to be issued by the Independent Engineer as per para 2 (xiii) of Appendix 7.

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

"Completion Certificate" shall have the meaning assigned to it under Article 6.3.

"Concession" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the LNG Port Project and providing Project Facilities and Services.

"**Concessioning Authority Event of Default**" shall have the meaning as set out under Article 15.1(b).

"Concessionaire Event of Default" shall have the meaning as set out under Article 15.1 (a).

"Concession Period" means the period of the Concession specified in Article 2.2 of this Agreement.

"Conditions Precedent" shall mean the conditions prescribed in Article 3 of this Agreement.

"Construction Phase" means the period from the Date of Award of Concession to the Date of Commercial Operation.

"Construction Works" means all works, equipments and things necessary to complete the LNG Port Project and provide the Project Facilities and Services in accordance with this Agreement.

"Construction Standards" means the construction standards set out in the Annexure to Appendix 4.

"Consultation Notice" has the meaning ascribed to it in Article 15.3.

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

"Date of Award of Concession" means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

"Date of Commercial Operation" means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement

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

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

(a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the LNG Port Project ("**the Principal**") but excluding: (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced,

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

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

"Designs and Drawings" means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

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

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

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

"Equity" means the paid up share capital of the Concessionaire representing the equity component of the Actual Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

"Equity Documents" means collectively the documents evidencing subscription to Equity to the extent of equity component of cost of the LNG Port Project.

"Estimated Project Cost" means the sum of **Rs.5151.00 crores (Rupees Five Thousand One Hundred and Fifty One Crores only)** being the cost of the LNG Port Project and LNG Re-Gasification Project as estimated by the Concessionaire.

"Estimated Port Project Cost" means the sum of **Rs. 228.00 Crores (Rupees Two Hundred and Twenty Eight Crores Only)** being the cost of the LNG Port Project as estimated by the Concessionaire.

"**Event of Default**" shall have the meaning assigned to it under Article 15.1.

"Exclusivity Period" shall have the meaning ascribed to it in Article 12.2 (c).

"Expert" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

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

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

"Financial Year" means any twelve month period commencing from 1st April and ending on 31st March.

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

"Financing Plan" means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the LNG Port Project and LNG Re-Gasification Project submitted by the Concessionaire in accordance with **Article 3.1(a)(v).**

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

"GoI" means the Government of India.

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

"Government Authority" means GoI, any state government or any governmental

department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Project Facilities and Services or any portion thereof, but shall not include the Concessioning Authority.

"Independent Engineer" means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities for LNG Port Project Facilities as set forth in Appendix 7.

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

"Insurance Cover" shall have the meaning ascribed to it in Article 12.1(c) (ii).

"**ISPS Code**" means the International Ship and Port Facility Security Code, being an internationally recognized set of maritime measures, to enhance security of ship and port facilities.

"**Landing & Shipping Place**" shall have the meaning given in Section 37 of the Major Ports Trusts Act, 1963.

"**Landing & Shipping Place Declaration**" means a declaration by the Collector of Customs declaring the Project Facilities and Services as a Landing and Shipping Place.

"**Land Lease Agreement**" means the lease agreement to be executed and registered, pursuant to the Concessioning Authority getting the title of the land registered in its name, between the Concessioning Authority (Lessor) and the Concessionaire (Lessee) in relation to the Leased Premises described in the schedule annexed to the Land Lease Agreement on such terms as set forth therein and attached as Appendix-14 hereto.

"Lease Rent" shall mean the lease rent details of which are given in Article 9.1 (a).

"**Leased Premises**" means the land leased to the Concessionaire by the Concessioning Authority as per the terms of the Land Lease Agreement in respect of LNG Re- Gasification Facilities.

"Lenders" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures / or other debt instruments issued by the Concessionaire to Finance the LNG Port Project.

"**License Fee**" shall have the meaning assigned to it under Article 9.1 (a)

"**Liquefied Natural Gas**" or its abbreviation "**LNG**" means predominantly methane

and certain other components in a liquid state, at or below its boiling point and at a pressure of approximately 1 (one) atmosphere. "**LNG Basin**" means the region under sea water, connecting the common user outer channel at Kamarajar Port, to the Project Facilities and Services.

"LNG Port Project" means the design, finance, construction, operation, maintenance of the Project Facilities and Services in accordance with the provisions of this Agreement.

"LNG Port Project Facilities" means and includes a jetty, approach trestle, other associated offshore works and ancillary facilities including berthing and mooring facilities, wharf, vessel transit area, and works within the Project site and Port Assets capable and sufficient for handling LNG of not less than 5 MMTPA, as expanded from time to time.

"LNG Re-Gasification Facilities" means LNG regasification terminal facilities including LNG storage tanks, onshore facilities required for the import, regasification and dispatch of LNG and related activities within the Leased Premises.

"LNG Re-Gasification Project" means the design, finance, construction, operation and maintenance of the LNG Re-Gasification Facilities and all services rendered in relation thereto and carrying out the business of re-gasifying, marketing and selling of gas and re-gasifying gas by tolling and executing other ancillary activities and works within the Leased Premises.

"Management Control" means the power to elect or appoint more than 26% (Twenty Six percent) of the directors on the board of the Concessionaire.

"Material Adverse Effect" means material adverse effect on: (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"Milestone Dates" means the dates for completion of specified Project activities as contained in the Project Schedule.

"Minimum Guaranteed Cargo" shall have the meaning ascribed to it in Article 7.1(a) (xiii).

"Month" means the calendar month as per the Gregorian calendar.

"MPT Act" means The Major Port Trusts Act, 1963 as amended, supplemented, re-enacted or replaced from time to time.

"Non-Political Event" means the Force Majeure Events set out in Article 14.2.

"O&M Contract" means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the LNG Port Project in accordance with the provisions of this Agreement.

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

"Operations and Maintenance Standards" means the minimum standards of operations and maintenance set out in the annexure to Appendix 4 with regards the Project Facilities and Services.

"Other Events" means the Force Majeure Events set out in Article 14.4.

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

"Performance Standards" means the minimum standards of performance set out in Appendix 11 with regards the Project Facilities and Services.

"Performance Guarantee" shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessioning Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

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

"**Pilotage Charges**" means the charges payable by the Concessionaire for the pilotage services availed from the Concessioning Authority.

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in Appendix 2, belonging to the Concessioning Authority.

"**Port Limits"** means the limits of Kamarajar Port as defined under Section 5 of the Indian Ports Act, 1908, as amended from time to time.

"Project" means comprehensively the LNG Port Project and the LNG Re-Gasification Project.

"Project Capacity" means the capacity of the Project Facilities and Services to handle LNG not less than 5 Million Tonnes per annum.

"Project Contracts" means collectively this Agreement, the EPC Contract, O&M

Contract and any other material contract (other than the Financing Documents, the Substitution Agreement or any commercial agreement with the users) entered into or may hereafter be entered into by the Concessionaire in connection with the LNG Port Project and Project Facilities and Services.

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

"Project Requirements" means the minimum requirements as to the construction, operation and maintenance of the LNG Port Project and provision of Project Facilities and Services set out in Appendix 4.

"Project Schedule" means the Appendix 5 hereto.

"Project Site" means the area demarcated in Appendix 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

"Provisional Certificate" shall have the meaning assigned to it under Article 6.7 (d).

"Punch List" shall have the meaning assigned to it under Article 6.7 (d).

"Quarter" means a period of 3 (three) Months.

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

"Requisition" has the meaning ascribed to it in Article 16.3.

"Safety Standards" means the minimum standards of safety set out in the Annexure to Appendix 4 with regards the LNG Port Project/Project Facilities and Services.

"Scale of Rates" means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by KPL or such other competent authority as applicable.

"Scheduled Project Completion Date" means the date falling **60** Months from the Date of Award of Concession.

"Selectee" has the meaning ascribed to it in Article 15.4(b).

"Special Audit" shall have the meaning assigned to it under Article 9.4.

"Statutory Auditors" means a firm of chartered accountants appointed in terms

of Section 224 of the Companies Act, 1956 and acting as the statutory auditors of the Concessionaire.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessioning Authority, the Concessionaire and the Lenders.

"Supporting Project Infrastructure" means**:**

(a) maritime access channels;

(b) port entrance;

(c) protective works including breakwaters, shore protection;

(d) access to port for inland transport (including roads, bridges and tunnels);

(e) rail connections between hinterland and port;

and shall include such other facilities as may be specified by the Concessioning Authority as supporting infrastructure provided/to be provided for the Project.

"SBI Base Rate" means the Base Rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

"TAMP" means Tariff Authority for Major Ports established under the MPT Act.

"Tariff" means the applicable rate(s) as per Scale of Rates that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"Tariff Notification" means the notifications on Tariff issued by KPL from time to time and shall include any revisions thereof.

"**Termination Notice**" means the termination notice issued pursuant to Article 16.1 hereof.

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

"Tests" shall have the meaning assigned to it under Article 6.7 (a) hereof.

"The Port" means Kamarajar Port.

"Transfer" means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the

legal or beneficial interest in the equity shares of the Concessionaire.

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

"Transaction Documents" means collectively the Project Contracts and the Financing Documents.

"Waterfront Royalty" means the amount payable by the Concessionaire to the Concessioning Authority, pursuant to Article 9.2 hereof.

1.2 Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard

"CISF" means Central Industrial Security Force.

"cum" means Cubic metre, the unit of volume

"ha" means Hectare, the unit of area

"IS" means Indian Standard.

"km" means Kilometre, the unit of length.

"m" means Metre, the unit of length.

"mm" means Millimetre, the unit of length.

"MMTPA" means Million Metric Tonnes Per Annum, the unit of Terminal throughput/ capacity.

"MT" means Metric Tonne, the unit of weight.

"sqm" means Square Metre, the unit of area.

"VAT" means Value Added Tax.

1.3 Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the LNG Port Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project.

In this Agreement unless the context otherwise requires:

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

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

(c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(d) the words "include" and "including" are to be construed without limitation;

(e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) any reference to day shall mean a reference to a calendar day;

(h) any reference to month shall mean a reference to a calendar month;

(i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

(l) unless otherwise stated, any reference to any period commencing "from" a

specified day or date and "till" or "until" a specified day or date shall include both such days or dates;

(m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

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

1.4 Measurements and Arithmetic Conventions

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

1.5 Ambiguities and Discrepancies

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

(a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

(b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail; and

(d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

CONCESSION AND PORT ASSETS

2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioning Authority a) License fee and b) Waterfront Royalty and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the LNG Port Project/ Project Facilities and Services.

2.2 Concession Period

The Concession hereby granted is for a period of 30 (thirty) years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the LNG Port Project and to provide Project Facilities and Services in accordance with the provisions hereof. Provided that: -

(a) in the event of the Concession being extended by the Concessioning Authority beyond the period provided for in Article 2.2 in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

(b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.

(c) The lease is not automatically renewable except for mutual agreement between the two parties on agreed terms and conditions within the land policy guidelines that would be prevailing at that point of time.

2.3 Acceptance of the Concession

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

2.4 Project site and Port Assets

(a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and port's assets for the purpose of implementing the LNG Port Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

(b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and port's assets as may be necessary or appropriate for implementing the LNG Port Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Project site and Port Assets

The Concessionaire shall not without the prior written consent or approval of the Concessioning Authority use the Project Site and port's assets for any purpose other than for the purposes of the LNG Port Project / the Project Facilities and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Concessioning Authority.

2.6 Information about Project site and Port Assets

The information about the Project site and Port Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the LNG Port Project. Subject to this, the Concessioning Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project site and Port Assets.

2.7 Acceptance of the Project site and Port Assets

The Concessionaire accepts possession of the Project site and Port Assets on "as is where is" basis and confirms having:

(a) inspected the Project Site / Port Assets, including the berths and all structures thereat and its surroundings;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site / Port Assets, the nature of the ground

and subsoil, the form and nature of the Project site and Port Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

(c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8 Peaceful Occupation

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

ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the "**Conditions Precedent**"):

(a) The following Conditions Precedent shall be satisfied by the Concessionaire:

(i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;

(ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

(iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

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

(v) Furnishing its Financing Plan and Financing Documents for the LNG Port Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessioning Authority under Article 3.1 (b) hereunder;

(vi) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:

(a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;

(b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;

(c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

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

(viii) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.

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

(i) handing over physical possession of the Project site and Port Assets for the purposes of the LNG Port Project;

3.2 The aforesaid Conditions Precedent shall be complied with within 180 Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioning Authority at any time in its sole discretion or the Concessioning Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioning Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioning Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.5 If the Concessioning Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Article3.3 above, and if the Concessionaire has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the

Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 3.6 below;

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Bid Security / Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 4

PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioning Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioning Authority encashable and enforceable at Chennai substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of **Rs.11.40 Crore (Rupees Eleven Crores and Forty Lakhs only) equalling 5% (five percent) of the Estimated Port Project Cost**. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioning Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of **Rs.11.40 Crores (Rupees Eleven Crores and Forty Lakhs only)** is available in immediate cash to the Concessioning Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operation. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioning Authority to forthwith terminate this Agreement.

ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

(a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefore, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

(b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operation. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7.

(c) The costs and expenses of the Independent Engineer shall be borne by the Concessioning Authority and the Concessionaire, equally.

(d) If the Concessioning Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessioning 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 clause (a) above.

(e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

ARTICLE 6

PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

6.2 Review of the Designs and Drawings

(a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.

(b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same (including taking into account the comments/observations of the Concessioning Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

(c) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.

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

(e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however, the Concessioning Authority at its sole discretion, may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the LNG Port Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

(h) Any review of the Designs and Drawings conducted by the Concessioning Authority is solely for the Concessioning Authority's own information and that by conducting such review, the Concessioning Authority does not accept any responsibility for the same.

(i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioning Authority has accepted responsibility for the engineering or soundness of any work relating to the LNG Port Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the LNG Port Project/ the Project Facilities and Services or any part thereof.

6.3 Construction Phase

6.3.1 Upon receipt of intimation from the Concessionaire on the substantial completion of the jetty, mooring system, fendering system, approach trestle and fire fighting system, that the facilities are ready for declaration as a "**Landing and Shipping Place**" for LNG cargo, the Independent Engineer shall inspect the LNG Port Project Facilities and on satisfying himself by the inspection, issue a "**Certificate of Substantial Completion**" to the extent required for the declaration as "**Landing and Shipping Place**", within two weeks.

6.3.2 Within two weeks of receipt of **Certificate of Substantial Completion**" and intimation from the Concessionaire that the facilities are ready for declaration as a "**Landing and Shipping Place**" for LNG cargo, the Concessioning Authority shall submit an application to the Customs Department for the declaration of the area as a **"Landing and Shipping Place"**.

6.3.3 The Concessionaire shall promptly commence and complete the works,

including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement ("**Completion Certificate**") not later than 60 Months from the date of commencement of the Concession Period.

6.4 Obligations of the Concessionaire

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

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

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

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

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

(e) provide to the representative(s) of the Concessioning Authority, at reasonable times and upon prior intimation, access to the Project site and Port Assets to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioning Authority of any works shall not, in relation to such works: (i) amount to any consent or approval by the

Concessioning Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioning Authority under this Agreement; and (ii) releaseor discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

(f) provide Monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;

(g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the LNG Port Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and

(h) to ensure safe and timely construction and completion of the LNG Port Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

6.5 Obligations of the Concessioning Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioning Authority shall:

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

(b) make available all records of sub-soil investigations carried out on its behalf in the Project site and Port Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement;

(c) upon satisfaction as to completion and receipt of Certificate of Substantial Completion / Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;

(d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the LNG Port Project ;

(e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the LNG Port Project ;

(f) Providing road connectivity from the existing road to the Leased Premises at the time of operation of the Terminal;

(g) prior to the Date of Commercial Operation of LNG Port Project Facilities, carry out the required capital dredging of the common user outer channel at the Port so as to provide the channel width and depth for manoeuvring LNG vessels of maximum 345 LOA, 53.8 m beam and -13.5 m draft;

(h) extend the Concession Period, in the event that default by the Concessioning Authority in complying with the requirements in respect of: (a) direct road connectivity as detailed in sub-article 6.5 (f) and/or; (b) capital dredging of the common user outer channel as detailed in sub-article 6.5 (g), causes any delay in achieving the Date of Commercial Operation, such extension being equal in duration to the period by which the Date of Commercial Operation is delayed;

(i) Provide water depths at LNG berth area, approaches to the LNG berth and basin as prescribed at Point 2 of Appendix 2 during operation of the LNG Terminal; and

(j) Provide marine services such as pilotage, Tugs etc. on chargeable basis as per KPL Scale of Rates applicable from time to time.

6.6 Suspension of Works

(a) Upon recommendation of the Independent Engineer to this effect, the Concessioning Authority may by notice require the Concessionaire to

suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioning Authority, such work is not in accordance with the Construction Standards / Safety Standards.

(b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioning Authority and thereupon represent to the Concessioning Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioning Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

(a) At least 60 (sixty) Days prior to the likely completion of the LNG Port Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuingthe Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the LNG Port Project meets with the Construction Standards (**"the Tests"**). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioning Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;

(b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results;

(c) Upon completion of Construction Works and the Independent Engineer deter mining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioning Authority a Completion Certificate substantially in the form set forth in Appendix 10;

(d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the **"Provisional Certificate"**) if the Tests are successful and the LNG Port Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **"Punch List"**) to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioning Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioning Authority shall be entitled to terminate this Agreement;

6.8 Operations during Construction Phase

The Concessionaire may, even during the Construction Phase, carry out operations subject to issuance of Certificate of Substantial Completion and requisite approvals in this regard and at its own cost and risk, provide services in relation to the LNG Port Project even before Completion Certificate is issued with respect to the construction works, for a maximum period of 8 (eight) Months from the date of issuance of Certificate of Substantial Completion. The Concessionaire shall pay Waterfront Royalty as set forth in Article 9.2 from the date when it commences operations.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligation on or before a milestone date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed **5% (five percent)** of the **Estimated Port Project cost** and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for

less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioning Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of the **5% (five percent)** of the **Estimated Port Project Cost**, the Concessioning Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioning Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 7

OPERATIONS & MAINTENANCE

7.1

(a) Obligations of the Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) Berth and Terminal Operations:

The Concessionaire shall:

(a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;

(b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;

(c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;

(d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;

(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions;

(f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;

(g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;

(h) ensure maintenance of proper and accurate record/data/ accounts

relating to operations of the Project Facilities and Services ;

(i) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;

(j) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and

(k) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) Tugs and Marine Craft

KPL will provide marine services such as pilotage, tugs etc. on chargeable basis as per KPL Scale of Rates applicable from time to time.

(iii) Repairs and Maintenance

The Concessionaire shall, at its own cost:

(a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipments; and

(b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iv) Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project Facilities and Services commensurate with the Project Requirements, at all times during the Concession Period.

(v) Repairs, Replacement or Restoration

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

(vi) Removal / Replacement of Assets

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

(vii) Payments to the Concessioning Authority

The Concessionaire shall make/ensure payments to the Concessioning Authority as per Article 9.

(viii) Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioning Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioning Authority provide the authorized representatives of the Concessioning Authority access to the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioning Authority for conducting a safety audit and verifying that the LNG Port Project/Project Facilities and Services are in strict compliance with the Safety Standards.

(ix) Reports

The Concessionaire shall provide to the Concessioning Authority, Monthly reports on cargo traffic and discharge rate at berth in respect of Project Facilities and Services within 15 (fifteen) Days following the end of each month, and any other information relating to operations which the Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives.

(x) Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessionaire Authority may specify from time to time.

(xi) Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site and with respect to the LNG Port Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioning Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

(xii) Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility. All labour law compliances shall be that of the Concessionaire alone.

(xiii) Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo handling of the levels set out in Appendix 13 ("**Minimum Guaranteed Cargo**") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

(xiv) Indemnity Against Claims for Loss of Goods

Notwithstanding anything contained in the provisions of the Company Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "**Action**") by any third party alleging the loss, destruction or deterioration of goods of which

charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioning Authority, its officers, employees, agents and representatives (the "**Indemnitees**") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement. If any order is passed against the Indemnities (monetary or otherwise), it shall be the sole responsibility of the Concessionaire to satisfy/pay off to the complete satisfaction of the Concessioning Authority.

(b) Obligations of the Concessioning Authority

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

(i) Marine and Port Services

The Concessioning Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

(a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a priority basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;

(b) engaging and deploying pilots licensed by the (Government of India or any other competent) authority for such purpose as applicable, for pilotage operations on a 24-hour basis (subject to safe navigational conditions), at the LNG Port Project Facilities;

(c) maintenance of the common user outer channel for manoeuvring LNG vessels of maximum 345 m LOA, 53.8 m beam and -13.5m draft.

(d) waterside safety and safety of navigation;

(e) maintaining water depths at LNG berth area, approaches to the LNG berth and basin as prescribed at Point 2 of Appendix 2.

(f) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

(g) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

(h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project site and Port Assets; and

(i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.

(ii) Approvals

The Concessioning Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

7.2 Utilities and Services

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

(a) the power made available shall be as received by the Concessioning Authority from Tamil Nadu Electricity Board (TNEB). The take off point for electricity shall be from the substation at Common substation located not more

than 5 Kms from the South west corner of the proposed Multi Cargo terminal.

(b) the water made available shall be as received by the Concessioning Authority from Chennai Metropolitan Water and Sewerage Supply Board (CMWSSB). The take off point for water shall be the nearest available water line;

(c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioning Authority, install meters to measure the consumption of power and water. The Concessioning Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;

(d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

ARTICLE 8

LAND LEASE AGREEMENT

8.1 At present Concessioning Authority is in peaceful possession of the land admeasuring 52 Hectares (leased premises) handed over to the concessionaire for development of LNG Terminal at KPL, however, the change of name in Revenue records is yet to be made which will be done after Concessioning Authority gets title in its favor. Pursuant to Concessioning Authority getting the title of the land registered in its name, lease agreement in favor of Concessionaire would be executed for a period of 30 years in line with Cabinet approval dated 09.05.2013, Pending execution and registration of the lease agreement(Appendix 14), Concessionaire can proceed with the construction activity on the said land.

8.2 The Concessionaire shall pay the entire lease rent for a period of 30 years in terms of Article 9.1 and at the time of execution and registration of the lease agreement, no further lease rent shall be payable by the Concessionaire to the Concessioning Authority.

ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 Lease Rent and License Fee

(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project site and Port Assets and the equipment comprised in the Port Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority

(i) **Rs. 94.19 Crores (Rupees Ninety Four Crores and Nineteen Lakhs Only) plus applicable service tax,** towards single upfront Lease rent (License Fee) for 30 years for the leased premises for Regasification plant. (this is indicative and calculated as per the present scale of rates. It has to be re worked based on date of demand by KPL.)

(ii) **Rs. 10,40,000 (Rupees Ten Lakhs Forty Thousand) plus applicable service tax,** if any**,** towards Security Deposit for the leased premises for Regasification plant.

(iii) Towards license fee for water front area for construction of jetty, berthing dolphins etc., the sum of **Rs. 12,18,492/- (Rupees Twelve Lakhs Eighteen Thousand Four Hundred and ninety two Only) per Annum plus applicable service tax,** worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (the "**License Fee**"). Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession.

(iv) Way leave charges for the approach trestle and pipe line corridor **the sum of Rs. 126.42 / RM/Annum** (**Rupees One Hundred Twenty Six and Forty Two Paise per Running Meter per Annum Only**) plus applicable service tax, worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (the "**Way leave charges**"). Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession.

(b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI Base Rate plus 2% (two percent) per annum on the amount outstanding.

9.2. Payments of Waterfront Royalty

(a) The Concessionaire shall pay to the Concessioning Authority, Waterfront Royalty per tonne of cargo unloaded at the LNG Port. Such Waterfront Royalty payments shall be based on the actual cargo throughputs achieved, which shall be determined on the basis of customs declarations, in the absence of which declaration given by ship surveyor appointed to certify the quantity of LNG cargo unloaded shall be considered.

(b) Waterfront Royalty for LNG cargo shall be Rs.131.96 (One Hundred and thirty one and Ninety Six Paise only) per tonne as on 1.4.2015.

(c) The Waterfront Royalty for LNG cargo shall be subject to revision based on the variation in the Wholesale Price Index (WPI). Such revision shall be based on the indexation against **60% of the variation in the WPI** for a relevant year beginning 1st January and 31st December.

(d) The Waterfront Royalty shall accrue from the date of commencement of operations of LNG Port Project Facilities. The payment of Waterfront Royalty shall commence from the Month following the Month in which the date of commencement of operations of LNG Port Project Facilities occurs.

Notwithstanding anything contained hereinabove, no Waterfront Royalty is payable for the first two ship loads of LNG cargo brought and unloaded to the LNG Port Project Facilities, for the pre-commissioning activities of the LNG Re-Gasification and allied facilities.

(e) Waterfront Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.

(f) The Concessionaire shall submit for verification to the Concessioning Authority, the required statutory documents to ascertain the cargo throughput achieved per vessel.

(g) Waterfront Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI Base Rate plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

(h) As security for the payment of the Waterfront Royalty, the Concessionaire shall arrange bank guarantee(s) to be provided from one or more reputable scheduled bank(s) as acceptable to the Concessioning Authority before the date of commencement of operations of LNG Port Project Facilities, in favour of the Concessioning Authority. The value of the bank guarantee(s) for the period upto the end of the first Financial Year from the date of commencement of operations shall be equal to the average of the projected Monthly Waterfront Royalty for the first Financial Year and thereafter the value of the same shall

be revised by the end of expiry of 7 (seven) Days of each Financial Year to an amount equal to the average of previous year's Monthly Waterfront Royalty payments. The Concessionaire shall ensure that the aforesaid bank guarantee is kept renewed and valid throughout the term of this Concession Agreement. Failure to keep the guarantee renewed and valid as aforesaid shall tantamount to a material breach of the Concession Agreement.

9.3 Payment of Port Dues and Pilotage Charges

The Concessionaire or its authorised agent or the agent of the vessel, as the case may be, shall pay to the Concessioning Authority: (a) Port Dues; and (b) Pilotage Charge as per KPL's Scale of Rates approved and notified from time to time by KPL

9.4 Utilities or Services

The Concessionaire shall also pay rent or other charges for any premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be twice the Scale of Rates as may be notified by the competent authority in respect thereof from time to time.

9.5 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire and capital expenses towards the LNG Port Project. The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioning Authority and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the Gross Revenue ("**Special Audit**").

ARTICLE 10

ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

(a) Land and Water Area

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

(b) Assets created or provided by the Concessionaire

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

10.2 Permitted Charge on Assets

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project site and Port Assets nor encumber the Project site and Port Assets.

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

ARTICLE 11

SHAREHOLDING

11.1 Ownership Structure

The Concessionaire, M/s. IOLPL, is a limited liability company incorporated under the Indian Companies Act, 2013, having its registered office at IndianOil Bhawan, 139, Nungambakkam High Road, Chennai – 660034.

Current shareholding pattern of the company as on 29.05.2015 is as detailed below:

Sr. No.	Name	% Shareholding(paid up capital)
1.	Indian Oil Corporation Limited	50
2.	IDFC Project Equity Company Ltd.	40
3.	ICICI Bank Ltd.	10
	Total	

11.2 Shareholding

The Concessionaire shall ensure that the promoting company namely, M/s. Indian Oil Corporation Limited (IOCL) shall for the duration of the Concession Period be the Lead Member and maintain their equity holding such that the shareholding of the promoting company shall not be below 26% (twenty six percent) of the paid up equity capital of the Concessionaire. Any change in the shareholding pattern shall be communicated by the concessionaire to Concessioning Authority within 60 days.

The likely structure of Joint Venture shall be as under:

(i) 50% shareholding with Central & State PSUs (IOCL, CPCL, TIDCO etc.).

(ii) Balance 50% with Strategic Partner, Financial Institutions, and Public etc.

(iii) IOCL shall be the largest stakeholder in the JV.

Any change in the JV shareholding resulting into such change wherein IOCL is not a lead shareholder / promoter for such change, prior approval of the Concessioning Authority is mandatory, which consent shall not be unreasonably withheld

11.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

The promoting company of the Concessionaire namely, M/s. Indian Oil Corporation Limited (IOCL) shall within 6 (six) Months from the Date of Award of Concession, provide an undertaking to the Concessioning Authority stating that the shareholding in the Concessionaire shall not be below 26% (twenty six percent) of its Paid up equity capital throughout the Concession Period and any dilution in the said Paid up equity capital shall be only with the prior approval of the Concessioning Authority which consent shall not be unreasonably withheld. Any such dilution shall be only to a Public Sector Undertaking of Central/State Government of India.

ARTICLE 12

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

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

(b) Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the LNG Port Project/ the Project Facilities and Services.

(c) Insurance

(i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

(a) builder's all risk insurance;

(b) loss, damage or destruction of the Project Facilities and Services, at replacement value;

(c) comprehensive third party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site and port's assets.

(d) workmen's compensation insurance;

(e) marine cum storage cum erection insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the LNG Port Project and the Project site

and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Facilities and Services and all insurable risks associated with the LNG Port Project to the extent advisable in accordance with Good Industry Practice (**"Insurance Cover"**).

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioning Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioning Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessioning Authority in writing. If at any time the

Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ SBI Base Rate plus 2% (two percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning Authority by exercising right of set off or otherwise.

(vi) Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter-alia, the Concessioning Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(d) Indemnification

The Concessionaire shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessioning Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioning Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Concessionaire or as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Concessionaire or its Contractor(s),

sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of the Project site and Port Assets and/or construction, operation and maintenance of the Project Facilities and Services.

(e) Assignability

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

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

(i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and

(ii) authorize or be deemed to authorize the Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

(f) Engagement of Contractors

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

Provided:

(i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the LNG Port Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

(ii) the Concessionaire should have obtained requisite security clearance for the Contractor the Concessionaire intends to engage;

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

(iv) any contract that it enters with an Affiliate in respect of the LNG Port Project shall be on an arms length basis.

(g) Condition Survey

(i) The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioning Authority may itself cause the condition survey and inventory of the Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioning Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.

(ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioning Authority a guarantee issued by a scheduled bank in India for a sum of **Rs. 6.84 Crores (Rupees Six Crores and Eight Four Lakhs only)** at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioning Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

(h) The Concessionaire shall permit the Concessioning Authority to utilize the berthing and other facilities in the Project site and Port Assets, when they are not in use by the Concessionaire, as per mutually agreed terms

and conditions. The Concessionaire shall also endeavour to enter into arrangements with other users in the area for sharing common utilities.

12.2 Of the Concessioning Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

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

(b) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Project site and Port Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioning Authority.

(c) Competing Facilities

IOC/IOLPL shall have first right of refusal for use of any additional LNG import and regas facility / being developed by Concessioning Authority on its own or through any other person in the port limits of Kamarajar Port.

(d) General rights of inspection and verification

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

12.3 Of the Concessioning Authority and the Concessionaire

(a) Compliance with Laws and Regulations

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

(b) Rights to Documents

(i) Concessioning Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the LNG Port Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioning Authority, be returned by the Concessionaire to the Concessioning Authority on the Transfer Date.

(ii) Concessionaire's Documents

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the LNG Port Project the Project Facilities and Services shall be handed over by the Concessionaire to the Concessioning Authority free of cost on the Transfer Date.

(iii) Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

(iv) Obligation to Cooperate

The Parties shall mutually co-operate with each other in order to achieve the objectives of this Agreement.

(v) Substitution Agreement

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioning Authority of the Lenders' readiness to execute the same.

ARTICLE 13

CHANGE IN LAW

13.1 Change in Law

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

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

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

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

Provided any: (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iv) any rules or regulations stipulated by TAMP or other regulatory authority having jurisdiction over the LNG Port Project in respect of the standards of service shall not constitute a Change in Law.

13.2 The Concessionaire's Remedy

(a) In the event of Change in Law the Concessionaire may propose to the Concessioning Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such

Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure Event

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

(a) is beyond the control of the Party claiming to be affected thereby (the "**Affected Party**");

(b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and

(c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

14.2 Non-Political Events

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

(c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;

(d) the discovery of geological conditions, toxic contamination or archeological remains on the Project site and Port Assets that could not reasonably have been

expected to be discovered through a site inspection; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

(a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;

(b) action of a Government Authority having Material Adverse Effect including but not limited to: (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the LNG Port Project / Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;

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

(d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

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

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

(b) industry wide or State wide strikes or industrial action;

(c) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings

which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings: (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(d) Failure of concessionaire to import LNG or evacuate RLNG from the Terminal due to any reasons beyond the control of the concessionaire.

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

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

(b) The Notice shall inter-alia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/Monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

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

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

(b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

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

14.8 Performance Excused

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

14.9 Costs, Revised Timetable

(a) Costs

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

(b) Extension of time/period

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

Applicable Law.

14.10 Termination Due to Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of **365 Days**, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of **365 Days** be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

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

(a) The Concessionaire Event of Default

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

(i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;

(ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;

(iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;

(iv) Delay in payment of Waterfront Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;

(v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the LNG Port Project/the Project Facilities and Services, materially;

(vi) the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. [Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;]

(vii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

(viii) the Concessionaire passing a resolution for voluntary winding up;

(ix) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

(x) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

(xi) levy of an execution or destraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the LNG Port Project/Project Facilities and Services, materially and such execution or destraint remaining in force for a period exceeding 90(ninety) Days;

(xii) the Performance Guarantee is not maintained in terms of the provisions hereof;

(xiii) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

(xiv) a change in shareholding such that the beneficial interest of the promoting companies of the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;

(xv) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof without the Concessioning Authority's prior written approval. Provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the ability, demonstrated to the satisfaction of the Concessioning Authority, to undertake, perform/discharge the obligations of the Concessionaire under this Agreement, necessary approval shall be granted by the Concessioning Authority;

(xvi) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any

activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) The Concessioning Authority Event of Default

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

(ii) any representation made or warranties given by the Concessioning Authority under this Agreement is found to be false or misleading.

(iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Project site and Port Assets in any legal proceedings initiated against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

(iv) levy of an execution or destraint on the Project Site in any proceedings against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

(a) Upon the occurrence of the Concessionaire Event of Default, the Concessioning Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(b) Upon the occurrence of the Concessioning Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

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

15.3 Consultation Notice

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

15.4 Remedial Process

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

(a) the change of management or control/ownership of the Concessionaire;

(b) the replacement of the Concessionaire by a new operator ("Selectee") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:

  (i) the criteria for selection of the Selectee;

  (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

  (iii) handing over/ transfer of the Project site and Port Assets and the Project Facilities and Services to the Selectee;

  (iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;

  (v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and

  (vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

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

15.6 Revocation of Consultation Notice

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

15.7 Termination due to Events of Default

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

15.8 Concessioning Authority's Rights of Step-in

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

(a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;

(b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Site/Project Facilities and Services;

(c) step in and succeed upon election by Concessioning Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

Provided that, in such circumstances, the Concessioning Authority shall assume the obligations of the Concessionaire with respect to the Lenders during such Remedial Period out of the current revenues. Provided further, the Concessionaire acknowledges that any payments made by the

Concessioning Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioning Authority to the Concessionaire in terms of the provisions of this Agreement.

ARTICLE 16

TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

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

16.2 Obligations during Termination Period

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

16.3 Requisition

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

(a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;

(b) data or records regarding the operation and maintenance of the Project Facilities and Services;

(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

(d) any other information or records regarding Concessionaire, its business, the LNG Port Project /Project Facilities and Services, assets and liabilities.

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

16.4 Condition Survey

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

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

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

16.5 Consequences of Termination

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

(a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a

Force Majeure Event or on account of an Event of Default in accordance with Article 18;

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

Notwithstanding anything contained in this Agreement, the Concessioning Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re- employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the LNG Port Project, and the handback of the Project Site /Project Facilities & Services by the Concessionaire to the Concessioning Authority shall be free from any such obligation.

ARTICLE 17

COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

(i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to a Other Event, compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioning Authority Event of Default under Article 17.1 (c).

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

(b) Termination due to Concessionaire Event of Default

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

(i) the Book Value;

(ii) 90% (ninety percent) of Debt Due;

(iii) the Actual Project Cost;

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

(c) Termination due to Concessioning Authority Event of Default

If the termination is due to a Concessioning Authority Event of Default, the compensation payable by the Concessioning Authority shall be equal to the aggregate of: (i) Debt Due; plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

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

17.3 Transfer Fee and Charges

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

(a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;

(b) the Concessioning Authority in the event of termination due to an Concessioning Authority Event of Default or Political Event; and

(c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

17.4 Payment of Compensation to Lenders

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

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Lenders as the case may be shall be entitled to remove at its/ their cost all such movables which are not taken over by the Concessioning

Authority and to deal with the same in accordance with their respective rights under law.

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

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioning Authority fails to pay the compensation on the Transfer Date, the Concessioning Authority shall be liable to pay interest @ SBI Base Rate plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

17.6 Delayed Transfer of Assets

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

(a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities; and

(b) account for and pay to the Concessioning Authority, the charges for the Project Facilities and Services as per the Scale of Rates as notified by the TAMP or such other competent authority from time to time. In case, no charges are notified by the TAMP or such other competent authority, charges shall be levied based on the adhoc rate(s) authorized by the Concessioning Authority, subject to regularizing it subsequently on its notification by the TAMP or such other competent authority.

In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioning Authority, for every Day of delay, liquidated damages computed at the rate of the average daily gross revenue from Waterfront Royalty, Port Dues, Pilotage and Dredging Charges earned by the Concessioning Authority from the LNG Port Project during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article

17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioning Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioning Authority is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning Authority. Provided however, the Concessionaire shall be liable to pay Waterfront Royalty in accordance with Article 9.2.

17.7 Remedies Cumulative

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

ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

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

18.2 Concessionaire's Obligations

The Concessionaire shall;

(a) hand over peaceful possession of the Project Site, Port's Assets, the LNG Port Project, and the Project Facilities and Services free of Encumbrance;

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

(c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Project Facilities and Services;

(e) transfer or cause to be transferred to the Concessioning Authority any LNG Project Contracts which are: (i) valid and subsisting; (ii) capable of being transferred to the Concessioning Authority; and (iii) those the Concessioning Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioning Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favour of the Concessioning Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessioning Authority;

(f) at its cost, transfer to the Concessioning Authority, all such Applicable

Permits which the Concessioning Authority may require and which can be legally transferred. Provided, if the termination is on account of Concessioning Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioning Authority; and

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

18.3 Concessioning Authority's Obligations

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

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

18.4 Risk

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

ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

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

19.2 Assistance of Expert

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

19.3 Arbitration

(a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the Presiding Arbitrator within 30 (thirty) days of the appointment of second Arbitrator. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as "Sole Arbitrator"

(b) Place of Arbitration

The place of arbitration shall be Chennai, India.

(c) English Language

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

(d) Procedure

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

(e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) Fees and Expenses

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

(g) Performance during Arbitration

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

ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

(a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;

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

(f) it has the financial standing and capacity to undertake the LNG Port Project in accordance with the terms of this Agreement;

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

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(i) it has complied with Applicable Laws in all material respects and has not been

subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

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

(k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioning Authority or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioning Authority in connection therewith;

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

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

20.2 Representations and Warranties of the Concessioning Authority

The Concessioning Authority represents and warrants to the Concessionaire that:

(a) it is duly organised, validly existing and in good standing under the laws of India;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessioning Authority, enforceable against it in accordance with the terms hereof; and

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

20.3 Disclosure

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

ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the LNG Port Project is the Chart Datum (0.000) which is 0.54 m below mean sea level.

21.2 Survival of Obligations

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

21.3 Articles to survive Termination

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

21.4 Joint Responsibility

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

21.5 Several Obligations

Nothing contained in this Agreement shall be construed to create an association,

trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

21.6 Severability

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

21.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioning Authority:

CHAIRMAN & MANAGING DIRECTOR,
KAMARAJAR PORT LIMITED,
4th Floor, Erstwhile DLB Building, Rajaji Salai
Chennai - 600001

The Concessionaire:

CHAIRMAN,

INDIANOIL LNG PVT. LIMITED

IndianOil Bhawan, 139, Nungambakkam High Road,

Chennai - 660034

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

21.8 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.9 Amendments, Modifications or Alterations

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

21.10 Governing Law

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

21.11 Entire Agreement

This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to

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

21.12 Counter Parts

This Agreement shall be executed in two counterparts, each of which when executed and delivered, will be an original, and both counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this

Agreement on the dates first herein above written:

Common Seal of the Concessioning Authority

is affixed in the presence of **Mr.M.A.Bhaskarachar**

who has signed this Agreement in token thereof.

Signed and Delivered by the Concessionaire by the

hand of its authorized representative **Mr.G.K.Satish**

pursuant to Resolution dated **27th June 2015** of

its Board of Directors.

Witnesses:

1.

2.

APPENDIX 1

PROJECT SITE

1. **Physical conditions:** The LNG Berth is proposed on the Southern side of the North Break water as a Jetty with Mooring Dolphins and approach Trestle to the break water. The Berth is proposed on the North west side of the existing Marine Liquid Jetty-1, as more particularly marked and shown in the attached drawing no. 01 (Layout of LNG Port Project Site attached)

2. **Site Conditions:** The Concessioning Authority shall provide Water front area of size 362 Meter (length) X 50 Meter (breadth) in as is where is condition for development of LNG Port Project.

   For the avoidance of any doubt, it is clarified that Project site does not include the Leased Premises, that is, the land leased to the Concessionaire in relation to the LNG Re-Gasification Facilities.

3. ROAD INFRASTRUCTURE

The Concessioning Authority shall provide road access to the leased premises at the time of operation of the LNG terminal.

The Concessionaire is permitted to construct, operate and maintain road infrastructure within the boundary limits of the leased premises.

4. SECURITY ARRANGEMENTS

CISF looks after the general security of the port and manning the gates. The Concessionaire shall abide by the security regulations / procedure as stipulated by the Concessioning Authority from time to time. The Concessionaire shall provide its own security arrangements for his assets.

5. PORT ENTRY

Entry into Port is based on prior permission. The Concessionaire has to obtain entry passes for the entire work force, tools, vehicles, equipments, etc, deployed for construction and operation of the Terminal. The entry passes for work force and vehicle will be issued on payment of processing fee.

PROPOSED LAYOUT OF LNG PORT PROJECT SITE



APPENDIX 2

PORT'S ASSETS

1. LAND

(a) The Concessioning Authority shall provide land of 362 m long and 50 m wide on the North west side of the existing Marine Liquid Jetty-1 for the development of Jetty with Mooring Dolphins and approach Trestle to the break water and other related facilities.

(b) The Concessioning Authority shall provide land of 800 m long and 650 m wide for development of LNG Re-Gasification plant and other related facilities inside the port boundary.

(c) Pipeline corridor (Right of Way) for transporting LNG through pipelines from Jetty to the storage tanks located around 2.5 km from Jetty.

2. DREDGING

At the time of operation of terminal, the Concessioning Authority shall provide the depths as follows in the port,

- -15 m CD at the water front alongside berth.
- -15.5m CD at the basin and
- -16m CD at the approach and entrance channel

The Concessioning Authority may consider, if commercially viable, for further deepening of the channel, basin and alongside of the berth depending on the vessel characteristics and the requirement at the request of the Concessionaire, but is not obliged to do so.

3. SUPPLY OF POWER & WATER

As per clause 7.2, the concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. The Concessionaire shall be liable for all payments to the concerned authority for power, water and other utilities required for the project during construction and operation phase.

4. LIGHTING

The Concessioning Authority will undertake general lighting of the port. The lighting within the premises of the terminal would be the responsibility of the Concessionaire.

5. SEWERAGE SYSTEM

At present no sewerage system is available at port. The Concessionaire shall make its own arrangements for the same.

APPENDIX 3

SUBSTITUTION AGREEMENT

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

AMONGST,

M/s KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001(hereinafter referred to as "KPL") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns ,

AND

M/s **IndianOil LNG Pvt. Limited**, a company registered under the Companies Act, 1956, and having its registered office at IndianOil Bhawan, 139, Nungambakkam High Road, Chennai – 660034 (hereinafter referred to as "IOLPL") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) ,

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ---------- ---------- (hereinafter referred to as "**the Lender**").

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at---------- ---------- acting for and on behalf of the Lenders listed in Schedule I hereto (hereinafter referred as "**the Lender's Representative**").

WHEREAS,

a) By the Concession Agreement dated **31st July 2015** entered into between KPL and IOLPL (hereinafter referred to as "**the Concession Agreement**"), KPL has granted to IOLPL, the Concession to implement the LNG Port Project in terms of the provisions set out thereunder;

b) By the letter dated 26.03.2015 KPL has agreed to execute and register, pursuant to the KPL getting the title of the land registered in its name, Land Lease Agreement between KPL and IOLPL (hereinafter referred to as "**the Land Lease Agreement**"), KPL has granted to IOLPL , a lease of land admeasuring 52.00 hectares or thereabouts, at Kamarajar Port and has handed over the possessionto implement the LNG Re-Gasification Project in terms of the provisions set out thereunder;

c) With a view to facilitate financing of the LNG Port Project and LNG Re-Gasification

Project by the Lender, KPL and IOLPL have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS SUBSTITUTION AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE-1

1.1 Definitions

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

"**Substitution Agreement**" means this Agreement and includes any amendment or modification made to this Substitution Agreement in accordance with the provisions hereof.

"**Financial Assistance**" means the financial assistance set forth in Schedule A hereto, agreed to be provided by the Lender(s) to _____ for financing the LNG Port Project and LNG Re-Gasification Project.

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt thereunder by _____ for a minimum period of 3 (three) months.

"Financing Documents" means, collectively, all the loan agreements, notes indentures, letters of credit, guarantee documents, debenture instruments, share subscription agreements, subordinated debt agreements and other documents, as the same may be amended, supplemented or modified from time to time, executed in favour of or entered into with the Lenders, by _____ in respect of the Financial Assistance and includes any document providing security for the Financial Assistance.

"**Lender(s)**" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to _____, from time to time.

"Residual Concession Period" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

"Residual Lease Period" means the period which shall be the remainder of the Lease Period computed from the date of issuance of Termination Notice in terms of the Land Lease Agreement.

"Selectee" means a Person proposed by the Lender/Lender's Representative pursuant to this Substitution Agreement and approved by KPL for substituting IOLPL for the Residual Concession Period and Residual Lease Period, in accordance with the provisions of the Concession Agreement and the Land Lease Agreement.

"Suspension Period" means the Termination Period as defined in Article 16.1 of the Concession Agreement at the end of which all formalities connected with substitution of

IOLPL by the Selectee including handing over of Project site and Port Assets/ Project Facilities and Services in accordance with this Substitution Agreement are completed and the substitution has become effective.

"Transaction Documents" means collectively the LNG Port Project Contracts, LNG Re- Gasification Project Contracts and the Financing Documents.

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

ARTICLE 2

ASSIGNMENT

2.1 Assignment of rights and title

IOLPL hereby agrees to assign its rights, title and interest in the Concession and the Lease to, and in favour of, the Lenders pursuant to and in accordance with the provisions of this Substitution Agreement, the Concession Agreement and the Land Lease Agreement, by way of security in respect of financing by the Lenders under the Financing Documents.

ARTICLE 3

Substitution of the IndianOil LNG Pvt. Limited

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders shall be entitled to substitute IOLPL by a Selectee under and in accordance with the provisions of this Substitution Agreement, the Concession Agreement and the Land Lease Agreement.

3.1.2 KPL hereby agrees to substitute IOLPL by endorsement on the Concession Agreement and the Land Lease Agreement in favour of the Selectee selected by the Lenders in accordance with this Substitution Agreement (For the avoidance of doubt, the Lenders shall not be entitled to operate and maintain the LNG Port Project/ LNG Re-Gasification Project).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders/Lenders' Representative may issue a notice to IOLPL (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to KPL for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default

and it shall be final and binding upon IOLPL for the purposes of this Substitution Agreement.

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

3.2.3 At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require KPL to suspend all the rights of IOLPL and undertake the operation and maintenance of the LNG Port Project, and upon receipt of such notice, KPL shall suspend the rights of IOLPL. Provided, such suspension shall be revoked upon substitution of IOLPL by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, KPL may terminate the Concession Agreement and Land Lease Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement and Land Lease Agreement; provided that upon written request from the Lenders/Lenders' Representative and IOLPL, KPL may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of IndianOil LNG Pvt. Limited default

3.3.1 Upon occurrence of a IOLPL default, KPL shall by a notice inform the Lenders/Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days time to the Lenders/Lenders' Representative to make a representation, stating the intention to substitute IOLPL by a Selectee.

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

3.4 Procedure for substitution

3.4.1 KPL and IOLPL hereby agree that on or after the date of Notice of Financial Default or the date of representation to KPL under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting IOLPL and taking on the rights and obligations under the Concession Agreement and the Land Lease Agreement.

3.4.2 To be eligible for substitution in place of IOLPL under the Concession Agreement and the Land Lease Agreement, the Selectee shall be required to fulfill the following eligibility criteria:

(i) the Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of IOLPL in respect of the Concession and Lease agreement as set forth in Article 8 under the Concession Agreement and in respect of the Lease under the Land Lease Agreement; and

(ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of IOLPL to KPL under the Concession Agreement and under the Land Lease Agreement, and also payment of amounts due to the Lender(s) under the Financing Documents, upon terms and conditions as agreed to between the Selectee and the Lenders.

Provided that the Lenders/Lenders' Representative may represent to KPL that all or any of the criteria may be waived in the interest of the Project, and if KPL determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

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

(a) accede to transfer to the Selectee the rights and obligations of IOLPL under the Concession Agreement and the Land Lease Agreement; and

(b) novate the Concession Agreement and Land Lease Agreement to the Selectee such that the Selectee replaces IOLPL and becomes entitled/obligated to all the rights and obligations of IOLPL, for the Residual Concession Period and Residual Lease Period.

3.4.4 If KPL has any objection to the transfer of Concession and the Lease in favour of the Selectee in accordance with this Substitution Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders'

Representative. If no such objection is raised by the KPL, the Selectee shall be deemed to have been accepted. KPL thereupon shall novate the Concession Agreement and the Land Lease Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by KPL, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of IOLPL.

3.5 Selection to be binding

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

ARTICLE 4

TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 5

TERMINATION OF CONCESSION AGREEMENT AND THE LAND LEASE AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders/Lenders' Representative may by a notice in writing require KPL to terminate the

Concession Agreement and the Land Lease Agreement forthwith, and upon receipt of such notice, the KPL shall terminate the Concession and Lease in accordance with the Concession Agreement and the Land Lease Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to KPL is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, KPL may terminate the Concession Agreement and the Land Lease Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

KPL a n d IOLPL hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders are entitled to receive from IOLPL , without any further reference to or consent of IOLPL, the Debt Due upon termination of the Concession Agreement and the Land Lease Agreement.

ARTICLE 6

DURATION OF THE SUBSTITUTION AGREEMENT

6.1 Duration of the Substitution Agreement

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

(a) Termination of the Substitution Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

ARTICLE 7

INDEMNITY

7.1 General indemnity

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

7.1.2 KPL will indemnify, defend and hold IOLPL harmless against any and all

proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of KPL to fulfill any of its obligations under this Substitution Agreement, materially and adversely affecting the performance of IOLPL's obligations under the Concession Agreement and Land Lease Agreement or this Substitution Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by KPL.

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

7.2 Notice and contest of claims

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

The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

ARTICLE 8

GENERAL

8.1 General

(i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Substitution Agreement.

(ii) Notices under this Substitution Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the Address of

any Party shall be duly notified by registered post acknowledgement due and delivered to the other Parties.

(iii) The expressions "KPL", "IOLPL", "the Lender", "the Lenders' Representative" and "Selectee" herein used shall unless there be anything repugnant to the subject or context, include the respective successors and assigns.

(iv) This Substitution Agreement shall not be affected by reorganisation of any Lender, IOLPL, or KPL, "Selectee" and the successor in the interest of the Lender, or KPL shall have the benefit of this Substitution Agreement.

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

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

(vii) The consultation, recommendation or approval of the Lenders' Representative under this Substitution Agreement shall always be deemed as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.

(viii) This Substitution Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.

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

(x) No amendment, variation or modification to this Substitution Agreement shall

be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.

(xi) All stamp duties or other imposts and charges as are applicable on this Substitution Agreement or on amendment of the Concession Agreement and the Land Lease Agreement or execution of fresh Concession Agreement and the Land Lease Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of IOLPL.

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

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the	Nature and Amount of Financing

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

SIGNED AND DELIVERED ON BEHALF OF M/S. IndianOil LNG Pvt. Limited

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF KAMARAJAR PORT LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

---------- ON BEHALF OF The LENDERS SETFORTH IN SCHEDULE A

BY: _____

Name:

Title :

APPENDIX 4

PROJECT REQUIREMENTS

I. SUMMARY OF MARINE FACILITIES FOR LNG PORT PROJECT:

THE MARINE FACILITIES FOR THE PROPOSED LNG RECEIVING TERMINAL SHALL BROADLY CONSIST OF T H E FOLLOWING:

A. JETTY, TRESTLE AND ACCESSORIES

1) APPROACH TRESTLE:

a) Approx. Total Length of Jetty Trestle: 2110 m (Onshore – 1650 m; Offshore- 450 m)

b) Roadway width: 4.0 m (Clear)

c) Pipe way width: 6.0 m

2) UNLOADING PLATFORM:

a) Unloading platform shall be in two levels

b) Lower deck approx. size: 33.0 m X 32.9 m

c) Upper deck approx. size: 18.5 m X 25.95 m

3) BERTHING DOLPHINS (BD):

a) Total Nos. of BD: 04

b) Approx. Deck size: 14 m X 12 m

c) Type of Fenders: Rubber/Super Cell type Fender

d) Quick Release Hook (QRH) per BD: 2 X 150 Tonnes

4) MOORING DOLPHINS (MD):

a) Total Nos of MD: 06

b) Approx. Deck size: 14m X 12 m

c) Quick Release Hook (QRH) per MD: 3 X 150 Tonnes

5) INTERCONNECTING WALKWAYS:

a) Walkway bridges shall connect the Unloading platform and

different dolphins.

6) ACCESS GANGWAY TOWER

7) SHIP TO SHORE COMMUNICATION:

a) LNG Carrier/ Shore Communications b) ESD (Emergency Shutdown) system

c) Mooring Line Tension Monitoring system

8) Berthing Aid System:

a) This system will be designed to aid the vessel while berthing by using a dual laser system to supply information back to the vessel on vessel berthing angle, distance and speed of approach

II. KEY PROJECT FACILITIES

(i) Berth Length

The centre to centre distance between first and last mooring dolphin is 350 meters.

(ii) Equipment

The LNG berth shall be equipped with equipment such as unloading arms, mooring hooks, cell type fenders, berthing aid system, access gangway tower, ESD system, mooring line tension monitoring system, navigation aids etc with capacity to handle at least 5 MMTPA of LNG cargo.

(iii) Others

The personnel and other related marine facilities shall be capable of handling at least 5 MMTPA of LNG cargo in accordance with the Performance Standards set out in Appendix 11 and LNG carriers ranging from 65000 – 266000 m^3 capacity

Annexure to Appendix 4

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

I. Construction Standards

A. General

The Concessionaire shall execute the LNG Port Project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO - 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

B. The Concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers.

C. In addition to complying with the requirement of relevant specifications mentioned above, the Concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory requirements.

D. Operations & Maintenance Standards: Repairs, Maintenance and Replacement

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

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved Detailed Feasibility Report.

While carrying out the repairing, maintaining and replacing the LNG Project

Facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, Project Facilities in trust for eventual transfer to the Concessioning Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Facilities and Services is diminished.

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

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

E. Safety Standards

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

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed there under of 1990.

2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.

3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.

4. OISD-Guidelines-156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.

5. The Explosives Act, 1884 along with The Explosive Substance Act, 1983 & The Explosive Rules, 1983

6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India

7. National Fire Codes (National Fire Protection Association – USA)

8. Drill Manual for the Fire Services of India.

9. International Safety Guide for Oil Tankers & Terminals.

10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)

11. MARPOL CONVENTION

12. International Maritime Dangerous Goods Code

F. It is not intended to specify herein all the relevant standards required to complete the LNG Port Project. Such of those standards considered more pertinent are listed hereunder.

G. LIST OF APPLICABLE CODES, STANDARDS AND GUIDELINES

1.0 INDIAN CODES AND STANDARDS

TAC Guidelines	Tariff Advisory Committee Guidelines
IS 4651 Parts I to V	Indian Standard of practice for planning & designing of Ports & Harbours
IS 1893-2002 (Part I)	Criteria for Earthquake Resistant Design of Structure
IS 875 (Part 3) (1987)	Code of Practice for Design Wind Loads
IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 4326: 1993	Code of Practice for Earth Quake Resistant design and construction of buildings.
OISD Standard 118 (2000)	Layout for Oil and Gas Installations
IS 456 (2000)	Code of Practice for Plan and Reinforced Concrete.
IS-800 (1984)	Code of Practice for general Construction in Steel.
IS-6403 (1981)	Code of Practice for determination of Bearing Capacity of Shallow Foundation
IS-8009 (Part 1) (1978)	Code of Practice for calculation of settlement of shallow foundations subject to symmetrical static vertical loads.
IS 2395: Part I and II	Code of Practice for Painting Concrete, Masonry and Plaster surface

IS 101	Method of Sampling and Test for Paint, Varnishes and Related Products
MINAS	Indian Standards for Effluent Disposal into the Sea

2.0 U.S.A. NATIONAL CODES AND STANDARDS

National Fire Protection Association (NFPA)

NFPA 59A	Standard for the Production, Storage and Handling of Liquefied Natural Gas LNG
NFPA 10	Portable Fire Extinguishers
NFPA 11	Standard Low Expansion Foam
NFPA 11A	Medium and High Expansion Foam System
NFPA 12	CO2 Extinguishing Systems
NFPA 15	Water Spray Fixed Systems

American Concrete Institute

ACI 318-89 (2000)	Building Code Requirements for Reinforced Concrete

American Petroleum Institute

API 6D 20th Edition (1995)	Specification for Valves
API 598 6th edition (2004)	Valve Inspection and Test
API 600 8th edition (2001)	Steel Gate Valves Flanged and Butt welding Ends
API 609 4th edition (2004)	Butterfly valves, Lug type and Water Type

American National Standards Institute

ANSI B1.1 (1989) Form)	Verified Inch Screw Threads (UN and UNR Thread
ANSI B1.201 (1992)	Pipe Threads, General Purpose (inch)
ANSI B16.1 (1998)	Cast Iron Pipe Flanges and Flanged Fittings
ANSI B31.3 (1993)	Chemical Plant and Petroleum Refinery Piping

American Society for Testing and Materials (ASTM)

ASTM A53-01	Specification for Welded and Seamless Galvanized Steel Pipe
ASTM A74-98	Cast Iron Soil Pipe and Fittings

Instrument Society of America (ISA)

ISA S5.1-84 approved (1992)	Instrumentation Symbols and Identification

American Water Works Association (AWWA Standards)

C.203 (2002)	Coal Tar Protective Coating and Lining for Steel Water Pipe
C.205 (2000)	Cement Mortar Protective Lining and Coating for Steel Water Pipe in a large shop applied
C.207 (2001)	Steel Pipe Flange for Water Works Service, 4" through 144"

National Electrical Manufacturers Association (NEMA)

NEMA SM.23 (1991)	Steam Turbine for Mechanical Drive Service (Chapter 9.4.6 only for piping assembly)

Fluid Controls Institute (FCI)

FCI 70.2 edition (1991)	Control Valve Seat Leakage

3.0 BRITISH NATIONAL STANDARDS

British National Institution

BS 6755 Part 2 (1987)	Specification for Fire Type Testing Requirement
BS 4999 BS 5000	Electric motors

4.0 INTERNATIONAL ELECTROTECHNIC COMMITTEE

Generally the Publications of this Committee are applied for all Electro-technic equipment mainly the following:

Pub 34	Electric motors
Pub 79-0	Electrical equipment for hazardous area general rules
Pub 79-10	Classification of hazardous area
Pub 79-1	Flame proof electrical equipment
Pub 79-7	Increased safety equipment

Pub 79-2	Pressurized safety equipment
Pub 79-14	Electrical installation in gaseous explosive atmosphere
Pub 72-1 & 2	Electric motor
Pub 076	Power transformers
Pub 85	Evaluation and classification of electric insulation
Pub 502	Power cables 1kV to 30kV
Pub 529	Enclosure protection classification (IP)

5.0 OTHER INTERNATIONAL STANDARDS

EUROPEAN STANDARD EN 1473 (1977) Installation and equipment for liquefied natural gas. Design of onshore installations.

International Maritime Organisation (IMO)

OCIMF	Oil Companies International Marine Forum-1980
SIGTTO	Society of International Gas Tank & Terminal Operators
OSHA	Occupational Safety & Health Administration
AISI	Specification for design, fabrication and erection of structural steel for buildings.
IEC 61511	Functional Safety – Safety Instrumented System for the Process Industries Sector (Part-1, Part-2, Part-3)

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APPENDIX 5

PROJECT SCHEDULE

DESCRIPTION	SCHEDULE
Substantial completion of works and issue of Certificate of Substantial Completion / Date of Commercial Operation	**58 (fifty eight) Months from the Date of Award of Concession**
Completion of works and issue of Completion Certificate / Scheduled Project Completion Date	**60 (sixty) Months from the Date of Award of Concession**

APPENDIX 6

DESIGNS AND DRAWINGS

The Concessionaire shall conduct geo-technical investigations, hydraulic and vessel maneuvering studies, and prepare and submit a report before the detailed layout and designs are prepared/ carried out.

The design and construction of the various components in the proposed LNG Port Project shall be in accordance with the recognised engineering practice and shall conform to the relevant Indian Standards. In the absence of Indian Standards, relevant International Standards shall be followed. In the absence of both, Good Industry Practice shall be followed.

The Concessionaire shall supply the Designs and Drawings including calculations, in 2 (two) sets to the Independent Engineer for approval and 2 (two) sets to the Concessioning Authority for review. The Designs and Drawings shall be sent in batches in chronological order of execution of work to facilitate scrutiny. The Designs and drawings, which shall be in metric/ SI unit, shall be bold and clear. References shall be given in general wherever required, for all Designs and Drawings.

The Concessionaire shall supply to the Concessioning Authority 2 (two) sets of the finalised Designs and Drawings within 15 (fifteen) Days of the approval by the Independent Engineer thereof. The Concessionaire shall also supply to the Concessioning Authority 1 (one) set of the "As Built" Drawings within 30 (thirty) Days from the date of completion of LNG Port Project Facilities along with a soft copy.

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APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

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

(i) review of the Designs and Drawings;

(ii) review, inspection and monitoring of Construction Works;

(iii) rendering assistance in seeking of approval from collector of customs for the purpose of operationalising the facilities and services.

(iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;

(v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(vi) assisting the Parties in resolution of disputes as regards the Designs and Drawings; and

(vii) undertaking all other duties and functions as envisaged under the Agreement.

2. Review or Designs and Drawings

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the

Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the Monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

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

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

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

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

(ix) In the event that the Concessionaire fails to adhere to the Project Schedule

and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the LNG Port Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the LNG Port Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

(x) If at any time during the Construction Period, the Independent Engineer deter mines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

(xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioning Authority.

(xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority and the Concessionaire of the same.

(xiii) Upon receipt of intimation from the Concessionaire on the substantial completion of the jetty, mooring system, fendering system, approach trestle and fire fighting system, that the facilities are ready for declaration as a "**Landing and Shipping Place**" for LNG cargo, the Independent Engineer shall inspect the LNG Port Project Facilities and on satisfying himself by the inspection, issue a "**Certificate of Substantial Completion**" to the extent required for the declaration as "**Landing and Shipping Place**", within two weeks.

(xiv) The Independent Engineer shall assist the Concessioning Authority in preparing the application to the Customs Department for the declaration of the area as a "**Landing and Shipping Place**".

(xv) Upon submission of the application to the Customs Department for the declaration of the area as a "**Landing and Shipping Place**", the Independent Engineer shall follow up and obtain the declaration by the Customs Department.

(xvi) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

Annexure to Appendix 7

Tests

Pre-Operating Tests (Site performance tests) for systematic checking of all marine equipments such as mooring hooks, access gangway, berthing aid system etc, instrumentation and related facilities for the purpose of allowing the LNG Port Project Facilities to be operated, for adjustment purposes under safe conditions prior to the berthing of first LNG carrier shall be carried out.

APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/ CONCESSIONING AUTHORITY

A. <u>Applicable Permits and Clearances obtained / to be obtained by the Concessionaire before commencement of Construction Works</u>.

Sl. No	Nature of Approval	Received on
1	NOC from Department of Explosives (PESO)	
2	Ministry of Environment & Forests	
3	Consent to Establish (NOC) from State Pollution Control Board, As per the Water	
4	Consent to Operate (CTO) from State Pollution Control Board, As per the Water	

B. <u>Applicable Permits and Clearances obtained/to be obtained by the Concessioning Authority</u>

Sl. No.	Nature of Approval	Received on
NIL		

APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the ---- day of ----- at ------ by ----------

---------- (Name of the Bank) having its Head/Registered office at ------

---------- hereinafter referred to as **"the Guarantor"** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favour of

M/s KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001, hereinafter referred to as **"the Concessioning Authority"** or as **"KPL"** which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a) In terms of the Concession Agreement dated ---between the Concessioning Authority and the Concessionaire, the Concessionaire is required to furnish to the Concessioning Authority a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs._____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

b) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. IOLPL ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs._____/- (Rupees _____ o n ly) within five (5) calendar Days of receipt of a written demand there for from the Concessioning Authority stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Concessioning Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Concessioning Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Concessioning Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Concessioning Authority shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Concessioning Authority or postponement/non exercise/ delayed exercise of any of its rights by the Concessioning Authority or any indulgence shown by the Concessioning Authority to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Concessioning Authority of any of the Concessioning Authority's rights or any indulgence shown by the Concessioning Authority ; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by

the Concessioning Authority in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs._____ /- (Rupees _____only).

6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:

   a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;

   b. shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;

   c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

   d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

   e. shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee;

   f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be

released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.

11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of ____for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREIN ABOVE WRITTEN.

SIGNED AND DELIVERED by_____Bank by the hand of Shri _____its _____and authorized official.

APPENDIX 10

CERTIFICATES

I. COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the [●] Project on build, operate and transfer (BOT) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to deter mine compliance of the Project with the provisions of the Agreement, and I am satisfied that the LNG Port Project can be safely and reliably placed in commercial service of the users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the LNG Port Project have been completed, and the LNG Port Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED For and on behalf of the INDEPENDENT ENGINER by:

(Signature)

(Name)

(Designation)

(Address)

II. PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the LNG Port Project on build, operate and transfer (BOT) basis through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been undertaken to determine compliance of the LNG Port Project with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioning Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the LNG Port Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the LNG Port Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the LNG Port Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:

(Name and Designation) (Address)

(Signature)

SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:

(Signature) (Name and Designation) (Address)	

APPENDIX 11

PERFORMANCE STANDARDS

The Concessionaire shall execute the LNG Port Project and all of its obligations with due care and diligence in a professional manner complying with the relevant construction standards, operation and maintenance standards and safety standards, and in accordance with Good Industry Practice such that besides complying with every requirement and obligation set forth in the Project Contracts and Applicable Laws, the Concessionaire shall also ensure that the LNG Port Project is fit for the intended Project Requirements as described in the Project Contracts.

APPENDIX 12

LIST OF MOVABLE ASSETS OF LNG PORT PROJECT FACILITY

Sl No	Description
I	Lighting on Jetty
Ii	Buoys near jetty and channel
Iii	Mooring Hooks
Iv	Fenders with frame
V	Gangway
Vi	Fire & Gas Detection System
Vii	Berth Aid System
Viii	Mooring Load Monitoring System & Quick Release System
Ix	Environment Monitoring System
X	Lighting System
Xi	Closed Circuit
Xii	P.A. System
Xiii	Unloading Arms
Xiv	Process Piping
Xv	Fire Fighting System

APPENDIX 13

MINIMUM GUARANTEED CARGO

Minimum Guaranteed Cargo throughput pertaining to relevant articles and Appendix shall be as follows:

Period starting from Date of Commercial operation.	**Minimum Guaranteed Cargo Throughput in %age of Terminal Capacity**
1st year	0
2nd year	0
3rd year	10
4th year	20
5th year onwards	50

Note:

1. Year means the period of twelve months commencing from the date of commercial operation and every twelve months period thereafter, during the term of this agreement.

APPENDIX 14

LAND LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made on the _____day of_____ ..... (hereinafter called "the Lease Agreement")

BETWEEN

KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001 represented by its ..... of…….aged…….years residing at (hereinafter called "the Lessor") on the one part

AND

M/s IndianOil LNG Pvt. Limited, a company registered under the Companies Act, 1956, and having its registered office at IndianOil Bhawan, 139, Nungambakkam High Road, Chennai – 660034 (hereinafter called "the Lessee") of the other part,

WHEREAS,

By the Concession Agreement dated ---------- entered into between the Lessor as Concessioning Authority and the Lessee as the Concessionaire (hereinafter referred to as "the Concession Agreement") the Lessor has granted to the Lessee, the concession to implement the LNG Port Project in terms of the provisions set out thereunder.

AND WHEREAS to facilitate the LNG Port Project, the Lessee has to put up the LNG Re- Gasification Project in the land measuring 52.00 hectares at Kamarajar Port and the Lessor has handed over the possession of the land to the Lessee. The Lessee has paid **Rs. 94.19 Crores (Rupees Ninety Four Crores and Nineteen Lakhs)** plus applicable service tax towards one time lease rent for the 30 years lease period effective from ---------.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

That the Lessor does in consideration of the above payment and other terms and conditions on the part of the Lessee to be observed, hereby grants to the Lessee, a lease (hereinafter called "the Lease") of ALL THAT piece of land containing by admeasurement 52.00 hectares or thereabouts, situated at Kamarajar Port,which piece of land is more particularly described in the schedule hereunder written and for greater clarity delineated with the boundaries thereof on the plan annexed hereto (hereinafter called "the Leased Premises") TO HOLD the same, for the LNG Re-gasification Project, upto the date of expiry of 30 (thirty) years commencing from the Date of

Award of Concession under the Concession Agreement for the LNG Port Project executed between the Lessee (Concessionaire) and Lessor (Concessioning Authority) [hereinafter called "the Term" or "Lease Period"], subject to the following conditions: -

Definitions and Interpretation

"**Concession Agreement**" means the Concession Agreement dated ---------for Setting Up of LNG Port Project in the Kamarajar Port executed between Kamarajar Port Limited and M/s. IndianOil LNG Pvt. Limited.

"**Date of Award of Concession**" means the date defined in the Concession Agreement.

"**Dy. Conservator**" means Deputy Conservator of Kamarajar Port Limited.

"**Expert(s)"** means an Engineer, Surveyor or other qualified person appointed by the Lessee and approved by the Lessor for the purposes specified in Article 2(c), 2 (f) and 5.

"Financial Assistance" means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the LNG Port Project and LNG Re-Gasification Project.

"Financing Documents" means, collectively, all the loan agreements, notes indentures, letters of credit, guarantee documents, debenture instruments, share subscription agreements, subordinated debt agreements and other documents, as the same may be amended, supplemented or modified from time to time, executed in favour of or entered into with the Lenders, by the Concessionaire / Lessee in respect of the Financial Assistance and includes any document providing security for the Financial Assistance.

"IOCL" means Indian Oil Corporation Limited.

"Leased Premises" means all that piece and parcel of land having an extent of 52.00 hectares at Kamarajar Port handed over to the Lessee on ------- by the Lessor in respect of the LNG Re-Gasification Facilities as per the plan annexed to this Lease Agreement.

"Lenders" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Concessionaire/Lessee to finance the LNG Port Project and LNG Re- Gasification Project.

"Lessee" means the **IndianOil LNG Pvt. Limited**.

"Lessor" means the **Kamarajar Port Limited.**

"LNG Port Project" means the design, finance, construction, operation,

maintenance and marketing and providing of the Project Facilities and Services in accordance with the provisions of the Concession Agreement.

"LNG Re-Gasification Facilities" means LNG re-gasification terminal facilities including LNG storage tanks, onshore facilities required for the import, re-gasification and dispatch of LNG and related activities within the Leased Premises.

"Port Regulations" means all rules and regulations framed under the Major Port Trust Act, 1963 or any other law in force and such other directions or regulations under any statute notified by the Lessor from time to time.

"Scale of Rates" means the scale of rates alongwith the statement of conditions with respect thereto framed from time to time and notified by KPL. as applicable.

"Selectee" means a Person proposed by the Lender/Lender's Representative pursuant to the Substitution Agreement and approved by the Lessor for substituting the Lessee for the Residual Concession Period and Residual Lease Period, in accordance with the provisions of the Concession Agreement and the Land Lease Agreement.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3 of the Concession Agreement.

"Term / Lease Period "means the period of lease for which the lease is granted by the Lessor to the Lessee.

Article-1.

(a) The Lessee has paid to the lessor **Rs. 94.19 Crores (Rupees Ninety Four Crores and Nineteen Lakhs) plus applicable service tax,** towards single upfront Lease rent for 30 years for the leased premises for Regasification plant.

(b) No further lease rent shall be payable by the Concessionaire to the Concessioning Authority during the 30 years period of this lease Agreement.

(c) The Lessee shall, from time to time and at all times during the said Term, pay and discharge all rates, taxes, charges, and assessments of every description now subsisting, or which may at any time hereafter during the said Term be imposed, charged or assessed upon the said premises hereby demised or the buildings to be erected thereon, whether it be payable by the Lessor or the Lessee.

(d) If the Lessee makes default in payment of sub-lease levy, charges for the utilities/ services/ facilities provided by the Lessor on chargeable basis, cargo and vessels related charges or any other dues to the Lessor and/or interest as provided

hereinbefore, the Lessor shall be entitled to revoke this agreement and cancel the Lease forthwith. The Lessee shall thereupon forfeit all its rights thereunder and shall remain liable for any sum then due by the Lessee and also for any loss, which may be caused to the Lessor by reasons of such default. However, no party will invoke termination clause as a matter of right but as a last resort after exhausting all provisions of Dispute Resolution Mechanism provided under Concession Agreement.

(e) The Lessee further agrees that the promoting company of the Lessee namely, M/s. Indian Oil Corporation Limited (IOCL), shall within 6 (six) Months from the Date of Award of Concession for the LNG Port Project, provide an undertaking to the Lessor stating that its shareholding in the Lessee Company shall not be below 26% of its Paid up/Subscribed share capital throughout the Lease Period of 30 (thirty) years and any dilution in the said share holding shall only be with the prior approval of the Lessor which consent shall not be unreasonably withheld. Any such dilution shall be only to a Public Sector Undertaking of Central/State Government of India.

Article-2.

(a) All plans for the development of leased property and construction of building(s)/ structure(s) /facility (ies) shall be got approved by the Concessioning Authority or its authorized representative of the Lessor, before the commencement of work. The plans shall also be got approved by the by the concerned statutory authority as required before the commencement of the work.

(b) The Lessee shall obtain all statutory and mandatory clearances as may be required under law including environmental clearances from appropriate authorities, before execution/commissioning of the LNG Re-Gasification Project and from time to time thereafter.

(c) Foundation and the structural design of the tank(s) and other structures shall be certified by Expert(s)/ PMC of the Lessee and such certificates shall be produced to the Lessor prior to proceeding with construction.

(d) Risk Analysis shall be conducted and Disaster Management Plan shall be submitted and got approved by Lessor before proceeding with the construction. A copy of the Environment Impact Assessment (EIA) study conducted shall be submitted to the Lessor before commencement of construction.

(e) After setting out and on reaching different stages, the Concessioning authority or his authorized representative shall be intimated, so as to enable them to verify whether the same is conforming to the lease conditions. The work shall be proceeded with, only after getting the clearance at each stage from Concessioning authority or his authorized representative.

(f) Construction of the tank(s) including its foundation shall be done under the supervision of Expert(s) as approved by the Lessor, and on completion of the work but prior to commissioning, a certificate from such agency regarding the structural soundness of the tank(s) shall be produced to the Lessor for issuing the occupation certificate.

(g) The Lessee shall use the said land for construction of building(s)/structure(s)/facility(ies) for the purpose of constructing, developing, operating and maintaining the LNG Re- Gasification Facilities, unless otherwise approved by the Lessor. The Lessee shall not make any unnecessary excavation or remove or appropriate any minerals, mineral substances of any description, sand or clay, from the said land. Any such materials obtained from the site should be placed or disposed off as directed by the Chief Engineer of the Lessor or his authorised representative.

(h) Building(s)/structure(s)/facility(ies) erected on the Leased Premises shall not be occupied until a formal occupation certificate is issued by the Lessor.

(i) If the Lessee has completed the construction of the building(s)/structure(s)/ facility(ies) as provided herein within the stipulated period:

i) The Lessee shall have the liberty to use the said land for purposes connected with its trade or business.

ii) It is made clear that the Lessee should utilise the maximum permissible area of the land leased for the construction of LNG Re-Gasification Facilities and the Lessor reserves the right to repossess without any claim to compensation whatsoever, the whole or part of the portion left unutilised and use the same in any manner deemed expedient by the Lessor. In case there is any dispute regarding the extent of land that should be utilised for the construction or the extent to be repossessed, the decision of the Board of the Lessor shall be final and binding.

(j) The Lessee shall not at any time without the previous consent in writing of the Lessor erect or suffer to be erected on the said land any building(s)/structure(s)/ facility(ies) other than and except the building(s)/structure(s)/ facility(ies) as approved by the Chief Engineer of the Lessor nor permit the same to be used for any purpose other than that specified above. In case Lessee fails to do so, the Lease shall be liable for termination.

(k) If the Lessee does not comply with such terms and conditions in this Lease Agreement, the Lessor shall be at liberty to terminate the Lease and thereupon the Lessee shall remove the building(s)/structure(s)/ facility(ies) erected or other

improvements made by it without any claim to compensation whatever and restore the premises to its original condition, within such time as directed by the Lessor. If the Lessee does not remove the building(s)/structure(s)/ facility(ies) or restore the premises to its original condition as required and within the time prescribed, the Lessor shall have the right to remove the said building(s)/structure(s)/ facility(ies) and restore the said premises to its original condition and the cost of such removal and restoration shall be realised from the sale of materials and the balance, if any, from the Lessee. In case there is any amount left from the sale price of the materials so removed, after realisation of the cost of removal and restoration referred to herein, the same may be utilised by the Lessor for recovery of any other amounts that may be due to the Lessor from the Lessee.

(l) Should the Lessee fail to complete construction of building(s)/structure(s)/ facility(ies) and commence the commercial operations of LNG Re-Gasification Facilities on or before the date of expiry of 60 Months from the Date of Award of Concession of the Concession Agreement, the Lessor reserves the right to repossess the land. However, in exceptional cases where the Lessor is satisfied that the delay is for reasons beyond the control of the Lessee, the Lessor may grant extension of the construction period subject to payment of additional lease rent calculated at 50% of the normal lease rent for the extended period.

(m) The Lessee shall observe and perform all Port Regulations/directions and follow all safety norms as may be prescribed by the competent/statutory authorities from time to time which are deemed to be a part of the Lease Agreement and shall be binding on the Lessee.

(n) The Lease shall be governed by provisions of the Major Port Trusts Act, 1963, Indian Ports Act, 1908 and all directives issued by the Government of India from time to time. It shall be binding upon the Lessee to comply with all such directives issued by the Government of India and communicated by the Lessor.

(o) The Lessee shall, at all times during the subsistence of the Lease, maintain the premises in good sanitary condition and repair and keep the building(s)/structure(s)/ facility(ies) erected on the said land in good and tenantable condition.

(p) The Lessee will pay for any damage done by it or its Employees/Workers or agents during the aforesaid period to any property of the Lessor on the said land or land adjacent thereto.

(q) The Lessor shall not be responsible to the Lessee or any other person(s) for any loss or damage or injury to life or property arising directly or indirectly from the

use of the Leased Premises and the activities the Lessee is engaged in on the said land during the period of Lease. The Lessee shall also indemnify the Lessor against all loss or damage or injury to life or property of any one including third party or claims and costs thereof arising directly or indirectly from the use of the Leased Premises and the activities the Lessee is engaged in the said land during the period of Lease.

(r) The Lessee shall provide to the representative(s) of the Lessor, at reasonable times and upon prior intimation, access to the Leased Premises, to ascertain compliance of the Lessee with the requirements of this Lease Agreement. Provided that, the representative(s) of the Lessor shall adhere to all safety and security regulations of the Lessee in respect of site access.

Article-3.

(a) The Lessee shall not assign, transfer or sub-lease the demised land or the building(s)/structure(s)/ facility(ies) erected or to be erected thereon or any part thereof without the consent in writing of the Lessor. Upon assignment, transfer or sub-lease of the land demised or any part thereof or of the building(s)/structure(s)/ facility(ies) to be erected thereon or any part thereof with the consent of the Lessor in writing and at any rate within one month of the date of such assignment, transfer or sub-lease, the Lessee shall deliver a notice of such assignment, transfer or sub-lease to the Lessor setting forth the names and descriptions of the parties thereto and particulars and effect thereof.

(b) The Lessee shall be liable to pay such charges, fees or levy as are prescribed from time to time on account of such assignment, transfer or sub-lease as the case may be. In the event of the Lessee effecting any such sub-lease, without the prior consent in writing of the Lessor for the same, it shall be open to the Lessor to approve of the same if a request therefor is made, provided, the Lessee pays the Lessor during the subsistence of such unauthorised assignment, transfer or sub-lease, additional amount as detailed below:

(i) Where consent has already been granted by the Lessor for the sub-lease as above, and the delay is only in respect of the submission of the application for renewal of the same, the amount payable in the case of delay not exceeding two months, shall be equivalent to interest at 20% of the levy payable in respect of the sub-lease levy for the period of such delay and where it exceeds 2 months, at 40% of sub-lease levy for the total period of such delay.

(ii) In the case of unauthorised sub-lease, the Lessee shall be liable to pay a penalty at the rate of three times the sub-lease levy.

Provided however that, the Lessor, if it is satisfied at its absolute discretion that such delay in filing the application for consent or renewal of consent for such sub-lease was for circumstances beyond the control of the Lessee, the Lessor may grant remission of a portion of the amount payable as above.

(c) It is also made clear that the above provision shall not be construed as a waiver of any of the rights of the Lessor under the Lease Agreement including the right to terminate the Lease for unauthorised sub-letting, which the Lessor is entitled to enforce against the Lessee.

(d) Any assignment, transfer or subletting without the prior approval of the authority which sanctioned the Lease shall make Lease liable for cancellation.

(e) Notwithstanding anything contained in this Lease Agreement, the Lessee shall be entitled: (a) to create a charge on its rights, title and interest in the assets created by the Lessee in the Leased Premises; and (b) to assign its right, interest and benefits under this Lease Agreement, as security in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents.

(i) Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Lease Period.

(ii) Provided further, that such charge shall not be for the Leased Premises nor encumber the Leased Premises.

(iii) In the event of occurrence of default by the Lessee under the Financing Documents, the Lenders shall be entitled to exercise their rights to substitute the Lessee by a new operator ("Selectee") in accordance with the provisions of the Substitution Agreement.

(iv) Provided further, in the event of termination of this Lease Agreement, the said charge shall stand extinguished upon payment of compensation by the Lessor to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Lease Agreement.

Article-4.

(a) The Lessee shall be entitled to surrender the whole or a part of the land already leased before the expiration of the said Term of 30 years; provided, the Lessee shall give six Months notice or pay six Months rent in lieu thereof. In cases where the whole or a part of land is surrendered at the instance of the Lessor, the Lessee shall not be liable to give notice or rent in lieu thereof as above. Rent will,

however, be payable for the period upto the date of surrender of the land.

(b) The Lessee shall utilise the maximum permissible area of the Leased Premises for the construction of the structures and the Lessor reserves the right to re-possess without any liability for payment of compensation, the whole or part of the portion of the land left unutilised and use the same in any manner deemed expedient by the Lessor.

Article- 5.

The lease is not automatically renewable, except for mutual agreement between the two parties on agreed terms and conditions within the land policy guidelines that would be prevailing at that point of time.

Article-6.

(a) At the time of termination of the Lease on the expiry of the Term thereof, or an earlier termination thereof, as provided herein, if the Lessor requires any of the building(s)/structure(s)/ facility(ies) erected on the land for its own use or otherwise, the Lessor shall be entitled to take over the same by paying compensation in respect of the same to the Lessee on the basis of the following formula:

FORMULA PRESCRIBED FOR PAYMENT OF COMPENSATION

$$Cp = R_c [0.10 + 0.90 (L-A)/L]$$

Where,

C_p = Compensation payment

R_c = Replacement Cost of equivalent new building(s)/ structure(s)/ facility(ies) as on the date of termination as determined by an independent Expert

L = Assessed life

A = Age as on the date of termination.

(b) In case of earlier termination of the lease due to any reason including surrender of lease by the Lessee, the Lessor shall refund to the Lessee the proportionate lease rent within Two (2) months of the termination of the lease.

Article-7.

(a) AND THE Lessor hereby agrees that the Lessee observing all the aforesaid conditions, shall peaceably hold and enjoy the said land during the said Term without any interruption by the Lessor, provided that, upon any breach or non-observance by the Lessee or by a person claiming through or under the Lessee of any of the aforesaid covenants or conditions the Lessor may, notwithstanding the waiver of any previous cause or right of re-entry, enter upon the said premises and re-possess it, as if this Lease had not been granted and thereupon this demise shall absolutely determine and the Lessee shall be entitled within three calendar months from the date of such re- entry to remove all building(s)/structure(s)/ facility(ies) which at any time during the currency of this Lease shall have been erected or affixed by the Lessee upon the said land without any claim to any compensation whatsoever.

(b) And the Lessor doth hereby further agree that before the expiration of the Lease period years the Lessee shall be entitled to remove all or any building(s)/structure(s)/ facility(ies) which at any time during the currency of this Lease shall have been erected or fixed by the Lessee upon the said land without any claim to any compensation whatever, and surrender the Leased Premises to the Lessor on giving six months' notice of the same or six month's rent at the then prevailing rate, in lieu thereof.

(c) It is distinctly agreed that the Lessee shall not claim or be entitled to any compensation whatever except as regards building(s)/structure(s)/ facility(ies)not removed by the Lessee from the said land in compliance with a request in writing by the Lessor.

(d) It is also distinctly agreed that the Lessee shall deliver up the demised premises at the expiration or sooner determination of tenancy restored to its former condition unless otherwise agreed/ requested by the Lessor.

(e) The Lessor shall be entitled to allow any public utility services such as electric posts, or cables, water supply, sewer lines, drains, sanitary lines or telegraph post or cables, to be taken through the said land and the Lessee shall not be entitled to any compensation in respect of the same, including compensation, if any, relating to the space occupied by such public utility services. Provided that, while allowing such public utility services to be taken through the said land, only the minimum possible hindrance shall be caused to other structures in the said land.

(f) It is further agreed that if the Lessee does not remove the building(s)/structure(s)/ facility(ies) as allowed above or restore the demised premises to its original condition as required by above within the time prescribed in the said articles, the Lessor shall have the right to remove the said building(s)/structure(s)/ facility(ies)

and restore the demised premises to its original condition and the cost of such removal and restoration shall be realised by the Lessor by the sale of materials recovered and the balance, if any, from the Lessee. In case there is any amount left from the sale price of the materials so removed, after realisation of the cost of removal and restoration preferred to herein, the same may be utilised by the Lessor for recovery of any other amounts that may due to the Lessor from the Lessee.

(g) It is also agreed that the terms "the Lessor" and "the Lessee" herein used shall, unless inconsistent with the context will include in the case of the former, its successors in office and assigns and in the case of the latter permitted assigns.

Article-8.

(a) Notwithstanding anything contained hereinbefore, it is expressly agreed and understood that the Lessor shall be entitled to terminate the Lease at the risk and cost of the Lessee in the event of violation if any, of the provisions hereof by the Lessee (Lessee Default) which is not rectified within a period of 90 (ninety) days of a notice in this behalf by the Lessor. Provided further that the Lessor shall also provide a notice to the Lenders to cure the Lessee Default or select a Selectee (as defined in the Substitution Agreement) to substitute the Lessee in accordance with the Substitution Agreement. In the event, the default is not cured or the Selectee is not selected by the Lenders within 180 days of receipt of the notice, then the Lessor has a right to terminate the Lease Agreement.

Article-9.

(a) The Lessee hereby irrevocably authorises the Lessor to pay to the Lenders or at their instruction to any designated bank account in India, the compensation payable to the Lessee. The Lessee confirms that upon such payment being made, the Lessor shall stand duly discharged of its obligations regarding payment of compensation under this Lease Agreement and the charge created by the Lessee in favour of the Lenders on any of its assets taken over by the Lessor shall stand satisfied and all such assets shall, on and from the date of termination of the Lease, be free from such charge. The Lessee further confirms that payment of compensation by Lessor in accordance with this Article 9 shall be a valid discharge to the Lessor in respect of Lessor's obligation regarding payment of compensation to the Lessee under this Lease Agreement.

(b) Provided, notwithstanding anything inconsistent contained in this Lease Agreement, the Lessee/the Lenders as the case may be, shall be entitled to remove at its/ their cost all such movables which are not taken over by the Lessor and to deal with the same in accordance with their respective rights under law.

(c) Provided further, if there are no amounts outstanding under the Financing

Documents and a certificate to that effect issued by the Lenders is furnished by the Lessee to the Lessor, the compensation shall be paid by the Lessor to the Lessee directly.

Article-10.

(a) The Schedule above referred to:

Registration District	: North Chennai Registration District
Registration Sub District	:Tiruvottiyur Registration Sub District (Puzhuthivakkam), Ponneri Registration Sub District (Kattupalli)
Taluk	: Ponneri
Firka	: Kattur
Village	: Kattupalli & Puzhuthivakkam
Desom	: India
Survey No.	: 7/3B part of Kattupalli Village & 1 part of Puzhuthivakkam Village
Sub Division No.	:
Area (in cents/acres/hectares)	: 52 Hectares
Limit	:
Tenure	: Lease

(b) DESCRIPTION OF BOUNDARIES

All the piece and parcel of land situated at _____

South	: Road/ Pipeline Corridor of ETTPL
West	: Vacant Land
North	: Vacant Land
East	: Road

The plan above referred to is appended (Annexure).

Article-11.

Capitalised terms used in this Lease Agreement but not defined shall have the meaning as assigned to them respectively in the Concession Agreement executed between the Lessor and the Lessee on __.

In witness whereof the common seal of the Kamarajar Port Limited has been affixed and the Secretary Mr. _____ of the Kamarajar Port Limited, for and on behalf of the Board of Kamarajar Port Limited has signed and the Lessee have by their duly constituted attorney ..... executed those presents on the day and year first above written.

The common seal of the Kamarajar Port Limited has been affixed and the Company Secretary of the Kamarajar Port Limited for and on behalf of the Board of the Kamarajar Port Limited has signed in the presence of:

Witness(1)

Witness (2)

The duly constituted attorney of the Lessee, in the presence of:

- Common Seal of the Lessee

Witness(1)

Witness (2)

The document is Computer printed :

Correction and interlineations: Nil

IN WITNESS WHERE OF THE LESSOR and the LESSEE have set their hands to this agreement on the day and year first above written.

LESSEE **LESSOR**

CONCESSION AGREEMENT

BETWEEN

KAMARAJAR PORT LIMITED

(THE CONCESSIONING AUTHORITY)
AND

INDIAN OIL CORPORATION LIMITED

(THE CONCESSIONAIRE)
FOR

CONSTRUCTION OF IOCL CAPTIVE JETTY AT KAMARAJAR PORT



JUNE 2016

Kamarajar Port Limited Chennai

Indian Oil Corporation Limited Marketing Division

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தமிழ்நாடு TAMILNADU

IOC

BK 036500

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V. RAJENDRAN, B.A.,
L. No. 4[illegible]/397
No. 54/420, PANTHEON ROAD,
EGMORE, CHENNAI-600 008.

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Chennai on this **9th day of June 2016.**

BETWEEN:

1. **M/s KAMARAJAR PORT LIMITED (CIN No.U45203TN1999GO1043322)** , a Major Port under the Companies Act, 1956 and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001, hereinafter referred to as **"the Concessioning Authority"** or as **"KPL"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the FIRST PART;

AND

2. **M/s INDIAN OIL CORPORATION LIMITED (CIN No.L23201MH1959GO1011388)** , a company registered under the Companies Act, 1956, and having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai – 400 051 hereinafter referred to as **"the Concessionaire" or as "IOCL"**(which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the OTHER PART.

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WHEREAS:

(A) IOCL, a premier Public Sector undertaking in India is engaged in Refining, Transportation of Crude Oil and Marketing of Petroleum Products including POL Products, LPG and Lube Oil Base Stock in bulk.

(B) IOCL is a significant Marketer of POL, LPG and Lube Oil Base Stock in bulk in India. To this effect, IOCL is exploring the possibilities of sourcing additional POL, LPG and Lube Oil Base Stock in bulk both through import as well as coastal movements.

(C) IOCL intends to construct a Jetty on its own at Kamarajar Port. The facilities will include jetty for Liquid Cargo Ships, Pipeline Corridor and Project Facilities for handling the POL, LPG & Lube Oil Base Stock in Bulk to its storage terminals.

(D) KPL is one of the Major Ports having a developed Port infrastructure facility at Ennore, in the State of Tamil Nadu with plans for handling various cargoes including LPG, POL & Lube Oil Base Stock in bulk.

(E) KPL intends to provide infrastructure support such as roads, ROW for Pipeline Corridor, Water front for IOCL Jetty and approach channel with adequate depth (minimum depth of 15 m for maximum permissible draft of 13.5 m vessel), port services etc. as may be necessary, for construction of IOCL Jetty within the port limit.

(F) Both IOCL & KPL recognise that there is scope of mutual cooperation between the parties considering the strength and business need of each of the Party.

(G) Pursuant to the aforementioned, KPL and IOCL entered into a Memorandum of Understanding on 30/11/2015, broadly encompassing each party's role in the project.

(H) Now KPL and IOCL are desirous of setting out their respective understandings as regards their mutual rights and obligations as regards the development, operation and maintenance of the IOCL Captive Jetty Project and related grant of concession and connected rights .

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NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto: -

"Actual Project Cost" means the actual capital cost incurred by the Concessionaire on the IOCL Captive jetty and the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Port Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of the Estimated Port Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioning Authority.

"Additional Auditor" has the meaning ascribed to it in Article 9.4.

"Additional Cost" means the additional capital expenditure which the Concessionaire has or would be required to incur and which has arisen as a result of Change in Law.

"Affiliate" means, with respect to any Party and/or with respect to the Applicant and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Applicant and/or member of Consortium. For the purposes of this definition, the term "control" (including with correlative meaning, the terms "controlled by" and "under common control with") as applied to any Party or Applicant or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Applicant or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

"Agreement" means this agreement as of date hereof, including Appendices I through 14 as may be amended, supplemented or modified in accordance with the provisions hereof.

"Appendix" means the schedules, supplements or documents, appended to this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances

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and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the IOCL Captive Jetty Project & Project Facilities and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.

"Board" means the Board of Kamarajar Port Limited.

"Book Value" means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of: (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgment of an Expert are capable of being put to use/utilized by the Concessioning Authority, and (ii) the movable assets including LPG & POL handling equipment belonging to the Concessionaire, which the Concessioning Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

"**Business Day**" means any day on which the banks are normally open for business at Ennore and **Chennai**.

"Certificate of Substantial Completion" means the Certificate to be issued by the Independent Engineer as per para 2 (xiii) of Appendix 7.

"Change in Law" shall have the meaning set out under Article 13.1 of this Agreement.

"Completion Certificate" shall have the meaning assigned to it under Article 6.3.

"Concession" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the IOCL Captive Jetty for handling POL, LPG & Lube Oil Base stock in bulk and providing Project Facilities and Services.

"**Concessioning Authority Event of Default**" shall have the meaning as set out under Article 15.1(b).

"Concessionaire Event of Default" shall have the meaning as set out under Article 15.1 (a).

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"Concession Period" means the period of the Concession specified in Article 2.2 of this Agreement.

"Conditions Precedent" shall mean the conditions prescribed in Article 3 of this Agreement.

"Construction Phase" means the period from the Date of Award of Concession to the Date of Commercial Operation.

"Construction Works" means all works, equipments and things necessary to complete the IOCL Captive Jetty Project and provide the Project Facilities and Services in accordance with this Agreement.

"Construction Standards" means the construction standards set out in the Annexure to Appendix 4.

"Consultation Notice" has the meaning ascribed to it in Article 15.3.

"Contractor" means a Person with whom the Concessionaire has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services.

"Date of Award of Concession" means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

"Date of Commercial Operation" means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement

"Day" means the 24 (twenty-four) hour period beginning and ending at 12:00 midnight Indian Standard Time.

"**Debt Due**" means the aggregate of the following sums representing the amounts advanced by the Lenders towards Actual Project Cost, expressed in Indian rupees as may be outstanding and payable to the Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the IOCL Captive Jetty project (**"the Principal"**) but excluding: (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due after the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced,

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unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority; and

(b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above upto the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Lender.

"Designs and Drawings" means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/ Project Facilities and Services.

"EPC Contract" means the contract entered into by the Concessionaire with one or more Contractors inter-alia for the purpose of design, engineering, procurement of equipment and materials (including by import thereof) and construction of the IOCL Captive Jetty in accordance with the provisions of this Agreement.

"Environmental Law" means any statute, rule, regulation, ordinance, code, guideline or policy having the force of law, in each case, applicable to the IOCL Captive Jetty now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

"Equity" means the paid up share capital of the Concessionaire representing the equity component of the Actual Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

"Equity Documents" means collectively the documents evidencing subscription to Equity to the extent of equity component of cost of the IOCL Captive Jetty Project.

"Estimated Project Cost" means the sum of **Rs. 465 crores (Rupees Four Hundred and Sixty Five Crores only)** being the cost of the IOCL Captive Jetty Project as estimated by the Concessionaire.

"**Event of Default**" shall have the meaning assigned to it under Article 15.1.

"Exclusivity Period" shall have the meaning ascribed to it in Article 12.2 (c).

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"Expert" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

"Financial Assistance" means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

"Financial Close" means the date on which the Financing Documents providing for Financial Assistance by the Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Concessionaire have become effective and the Concessionaire has access to such Financial Assistance.

"Financial Year" means any twelve - month period commencing from 1st April and ending on 31st March.

"Financing Documents" means, collectively, the documents executed in favour of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance relating to the financing (including any re-financing) of the actual cost of the Project and includes any document providing security for the Financial Assistance.

"Financing Plan" means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the IOCL Captive Jetty Project submitted by the Concessionaire in accordance with **Article 3.1(a)(v).**

"Force Majeure Event" shall have the meaning ascribed to it in Article 14.1 of this Agreement.

"GoI" means the Government of India.

"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.

"Government Authority" means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Project Facilities and Services or any portion thereof, but shall not include the Concessioning Authority.

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"Independent Engineer" means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities for IOCL Captive Jetty Project as set forth in Appendix 7.

"Indian Accounting Standards" means the Indian accounting standards issued by the Institute of Chartered Accountants of India.

"Insurance Cover" shall have the meaning ascribed to it in Article 12.1(c) (ii).

"**ISPS Code**" means the International Ship and Port Facility Security Code, being an internationally recognized set of maritime measures, to enhance security of ship and port facilities.

"**Landing & Shipping Place**" shall have the meaning given in Section 37 of the Major Ports Trusts Act, 1963.

"**Landing & Shipping Place Declaration**" means a declaration by the Collector of Customs declaring the Project Facilities and Services as a Landing and Shipping Place.

"Land Lease Agreement" means the lease agreement to be executed and registered, pursuant to the Concessioning Authority getting the title of the land registered in its name, between the Concessioning Authority (Lessor) and the Concessionaire (Lessee) in relation to the Leased Premises described in the schedule annexed to the Land Lease Agreement on such terms as set for the therein and attached as Appendix -14 hereto.

"Lease Rent" shall mean the lease rent details of which are given in Article 9.1 (a).

"**Leased Premises**" means the land leased to the Concessionaire by the Concessioning Authority as per the terms of the Land Lease Agreement.

"Lenders" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures / or other debt instruments issued by the Concessionaire to Finance the IOCL Captive Jetty Project.

"**License Fee**" shall have the meaning assigned to it under Article 9.1 (a)

"IOCL Captive Jetty Project" means the design, finance, construction, operation, maintenance of the Project Facilities and Services in accordance with the provisions of this Agreement.

"IOCL Captive Jetty Project Facilities" means and includes a jetty, approach trestle, other associated offshore works and ancillary / Project facilities including berthing and mooring facilities, vessel transit area, and works within the Project site and

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Port Assets capable and sufficient for handling cargo of not less than 3 MMTPA.

"Management Control" means the power to elect or appoint more than 26% (Twenty-Six percent) of the directors on the board of the Concessionaire.

"Material Adverse Effect" means material adverse effect on: (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"Milestone Dates" means the dates for completion of specified Project activities as contained in the Project Schedule.

"Minimum Guaranteed Cargo" shall have the meaning ascribed to it in Article 7.1(a) (xiii).

"Month" means the calendar month as per the Gregorian calendar.

"MPT Act" means The Major Port Trusts Act, 1963 as amended, supplemented, re-enacted or replaced from time to time.

"Non-Political Event" means the Force Majeure Events set out in Article 14.2.

"O&M Contract" means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Captive Jetty Project in accordance with the provisions of this Agreement.

"Operations Phase" means the period from the Date of Commercial Operation to the expiry/termination of the Concession Period.

"Operations and Maintenance Standards" means the minimum standards of operations and maintenance set out in the annexure to Appendix 4 with regards the Project Facilities and Services.

"Other Events" means the Force Majeure Events set out in Article 14.4.

"Party" means either the Concessioning Authority or the Concessionaire as the context may require or admit and **"Parties"** means both Concessioning Authority and Concessionaire.

"Performance Standards" means the minimum standards of performance set out in Appendix 11 with regards the Project Facilities and Services.

"Performance Guarantee" shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessioning Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

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"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

"Pilotage Charges" means the charges payable by the Concessionaire for the pilotage services availed from the Concessioning Authority.

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in Appendix 2, belonging to the Concessioning Authority.

"Port Limits" means the limits of Kamarajar Port as defined under Section 5 of the Indian Ports Act, 1908, as amended from time to time.

"Project" means comprehensively the IOCL Captive Jetty Project and Project Facilities and services to handle POL, LPG & Lube Oil Base stock in bulk.

"Project Capacity" means the capacity of not less than 3 MMTPA.

"Project Contracts" means collectively this Agreement, the EPC Contract, O&M Contract and any other material contract (other than the Financing Documents, the Substitution Agreement or any commercial agreement with the users) entered into or may hereafter be entered into by the Concessionaire in connection with the IOCL Captive Jetty Project and Project Facilities and Services.

"Project Facilities and Services" means the facilities and services as set out under the Project Requirements, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

"Project Requirements" means the minimum requirements as to the construction, operation and maintenance of the IOCL Captive Jetty Project and provision of Project Facilities and Services set out in Appendix 4.

"Project Schedule" means the Appendix 5 hereto.

"Project Site" means the area demarcated in Appendix 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

"Provisional Certificate" shall have the meaning assigned to it under Article 6.7 (d).

"Punch List" shall have the meaning assigned to it under Article 6.7 (d).

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"Quarter" means a period of 3 (three) Months.

"Remedial Period" has the meaning ascribed to it in Article 15.4.

"Requisition" has the meaning ascribed to it in Article 16.3.

"Safety Standards" means the minimum standards of safety set out in the Annexure to Appendix 4 with regards the IOCL Captive Jetty Project and Project facilities and services.

"Scale of Rates" means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by KPL or such other competent authority as applicable.

"Scheduled Project Completion Date" means the date falling 36 Months for LPG & 60 months for POL/LOBS after 180 days from the Date of Concession Agreement or the provision of EC whichever is later.

"Selectee" has the meaning ascribed to it in Article 15.4(b).

"Special Audit" shall have the meaning assigned to it under Article 9.4.

"Statutory Auditors" means a firm of chartered accountants appointed in terms of Section 224 of the Companies Act, 1956 and acting as the statutory auditors of the Concessionaire.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessioning Authority, the Concessionaire and the Lenders.

"Supporting Project Infrastructure" means:

(a) maritime access channels;

(b) port entrance;

(c) protective works including breakwaters, shore protection;

(d) access to port for inland transport (including roads, bridges and tunnels);

(e) rail connections between hinterland and port;

and shall include such other facilities as may be specified by the Concessioning Authority as supporting infrastructure provided/to be provided for the Project.

"SBI Base Rate" means the Base Rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

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"TAMP" means Tariff Authority for Major Ports established under the MPT Act.

"Tariff" means the applicable rate(s) as per Scale of Rates that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"Tariff Notification" means the notifications on Tariff issued by KPL from time to time and shall include any revisions thereof.

"**Termination Notice**" means the termination notice issued pursuant to Article 16.1 hereof.

"**Termination Period**" shall have the meaning as set out under Article 16.1 hereof.

"Tests" shall have the meaning assigned to it under Article 6.7 (a) hereof.

"The Port" means Kamarajar Port.

"Transfer" means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire.

"Transfer Date" means the date of expiry or termination as the case may be, of the Concession Period in accordance with the terms of this Agreement.

"Transaction Documents" means collectively the Project Contracts and the Financing Documents.

"Waterfront Royalty" means the amount payable by the Concessionaire to the Concessioning Authority, pursuant to Article 9.2 hereof.

1.2 Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard

"CISF" means Central Industrial Security Force.

"cum" means Cubic metre, the unit of volume

"ha" means Hectare, the unit of area

"IS" means Indian Standard.

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"**km**" means Kilometre, the unit of length.

"**m**" means Metre, the unit of length.

"**mm**" means Millimetre, the unit of length.

"**MMTPA**" means Million Metric Tonnes Per Annum, the unit of Terminal throughput/ capacity.

"**MT**" means Metric Tonne, the unit of weight.

"**sqm**" means Square Metre, the unit of area.

"**VAT**" means Value Added Tax.

1.3 Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the IOCL Captive Jetty Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project.

In this Agreement unless the context otherwise requires:

(a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

(b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

(c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(d) the words "include" and "including" are to be construed without limitation;

(e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;

(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(g) any reference to day shall mean a reference to a calendar day;

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(h) any reference to month shall mean a reference to a calendar month;

(i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

(k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;

(l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;

(m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

(n) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.4 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.5 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

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(b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail; and

(d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

CONCESSION AND PORT ASSETS

2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioning Authority a) License fee and b) Waterfront Royalty and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the IOCL Captive Jetty project / project facilities and Project facilities & services.

2.2 Concession Period

The Concession hereby granted is for a period of 30 (thirty) years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the IOCL Captive Jetty Project and to provide Project Facilities and Services in accordance with the provisions hereof. Provided that: -

(a) in the event of the Concession being extended by the Concessioning Authority beyond the period provided for in Article 2.2 in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

(b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.

(c) The lease is not automatically renewable except for mutual agreement between the two parties on agreed terms and conditions within the land policy guidelines that would be prevailing at that point of time

2.3 Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the IOCL Captive Jetty Project and to provide Project Facilities and Services in accordance with the provisions of this Agreement. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Concessionaire shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, conceptualize, design, engineer, finance, construct, equip, operate, maintain and replace the IOCL Captive Jetty project / project facilities and Project facilities & services .

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2.4 Project site and Port Assets

(a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and port's assets for the purpose of implementing the IOCL Captive Jetty Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

(b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and port's assets as may be necessary or appropriate for implementing the IOCL Captive Jetty Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Project site and Port Assets

The Concessionaire shall not without the prior written consent or approval of the Concessioning Authority use the Project Site and port's assets for any purpose other than for the purposes of the IOCL Captive Jetty project / project facilities and Project facilities & services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Concessioning Authority.

2.6 Information about Project site and Port Assets

The information about the Project site and Port Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the IOCL Captive Jetty Project. Subject to this, the Concessioning Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project site and Port Assets.

2.7 Acceptance of the Project site and Port Assets

The Concessionaire accepts possession of the Project site and Port Assets on "as is where is" basis and confirms having:

(a) inspected the Project Site / Port Assets, including the berths and all structures thereat and its surroundings;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site / Port Assets, the nature of the ground

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and subsoil, the form and nature of the Project site and Port Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

(c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8 Peaceful Occupation

The Concessioning Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project site and Port Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project site and Port Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project site and Port Assets or any part thereof the Concessioning Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

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ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the "**Conditions Precedent**"):

(a) The following Conditions Precedent shall be satisfied by the Concessionaire:

(i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;

(ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

(iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

(iv) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

(v) Furnishing its Financing Plan and Financing Documents for the IOCL Captive Jetty Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessioning Authority under Article 3.1 (b) hereunder;

(vi) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:
(a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
(b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
(c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

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(vii) Furnishing to the Concessioning Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and

(viii) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.

(b) The following Conditions Precedent shall be satisfied by the Concessioning Authority:

(i) handing over physical possession of the Project site and Port Assets for the purposes of the IOCL Captive Jetty Project;

(ii) obtaining Environmental clearance for the project from MoEF.

3.2 The aforesaid Conditions Precedent shall be complied with within 180 Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioning Authority at any time in its sole discretion or the Concessioning Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioning Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioning Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.5 If the Concessioning Authority has fulfilled all the Conditions Precedent under

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Article 3.1(b) and has not waived or extended the time under Article3.3 above, and if the Concessionaire has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 3.6 below;

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Performance Guarantee shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

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ARTICLE 4

PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioning Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioning Authority encashable and enforceable at Chennai substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of **Rs. 23.25 Crore (Rupees twenty three crore and twenty five lakhs only) equalling 5% (five percent) of the Estimated Project Cost.** The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioning Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of **Rs. 23.25 Crore (Rupees twenty three crore and twenty five lakhs only)** is available in immediate cash to the Concessioning Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operation. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioning Authority to forthwith terminate this Agreement.

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ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

(a) The Independent Engineer shall be selected through a tender process. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessioning Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefore, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.

(b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operation. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7.

(c) The costs and expenses of the Independent Engineer shall be borne by the Concessioning Authority and the Concessionaire, equally.

(d) If the Concessioning Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessioning 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 clause (a) above.

(e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.





ARTICLE 6

PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

6.2 Review of the Designs and Drawings

(a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.

(b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments / observations and suggestions on the same (including taking into account the comments / observations of the Concessioning Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

(c) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.

(d) If the Independent Engineer does not make any observation / comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be entitled to proceed with the IOCL Captive Jetty Project accordingly.

(e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however, the Concessioning Authority at its sole discretion, may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent

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Engineer.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and / or deficiency in the Designs and Drawings relating to the IOCL Captive Jetty Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

(h) Any review of the Designs and Drawings conducted by the Concessioning Authority is solely for the Concessioning Authority's own information and that by conducting such review, the Concessioning Authority does not accept any responsibility for the same.

(i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioning Authority has accepted responsibility for the engineering or soundness of any work relating to the IOCL Captive Jetty project and Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the IOCL Captive Jetty project and Project Facilities and Services or any part thereof.

6.3 Construction Phase

6.3.1 Upon receipt of intimation from the Concessionaire on the substantial completion of the jetty, mooring system, fendering system, approach trestle and firefighting system, that the facilities are ready for declaration as a "**Landing and Shipping Place**" for IOCL Captive jetty cargo, the Independent Engineer shall inspect the IOCL Captive jetty Project Facilities and on satisfying himself by the inspection, issue a "**Certificate of Substantial Completion**" to the extent required for the declaration as "**Landing and Shipping Place**", within two weeks.

6.3.2 Within two weeks of receipt of **Certificate of Substantial Completion**" and intimation from the Concessionaire that the facilities are ready for declaration as a "**Landing and Shipping Place**" for IOCL Captive jetty cargo, the Concessioning Authority shall submit an application to the Customs Department for the declaration of the area as a **"Landing and Shipping Place"**.

6.3.3 The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in

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accordance with the provisions of this Agreement ("**Completion Certificate**") not later than 36 Months from the date of commencement of the Concession Period for LPG and 60 months for POL/LOBS.

6.4 Obligations of the Concessionaire

Without prejudice to the generality of Article 6.3 and in addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessionaire shall:

(a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.

(b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;

(c) give written notice to the Concessioning Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified / amended documents to the Concessioning Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioning Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioning Authority. For avoidance of doubt, any such modifications/amendments made without the prior written consent of the Concessioning Authority will not be enforceable against the Concessioning Authority;

(d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

(e) provide to the representative(s) of the Concessioning Authority, at reasonable times and upon prior intimation, access to the Project site and Port Assets to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioning Authority of any works shall not, in relation to such works: (i) amount to any consent or approval by the Concessioning Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioning Authority under this Agreement; and (ii) releaseor discharge the Concessionaire from its obligations or

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liabilities under this Agreement in respect of such work;

(f) provide Monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;

(g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the IOCL Captive Jetty Project and Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and

(h) to ensure safe and timely construction and completion of the IOCL Captive Jetty Project / Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

6.5 Obligations of the Concessioning Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioning Authority shall:

(a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;

(b) make available all records of sub-soil investigations carried out on its behalf in the Project site and Port Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement;

(c) upon satisfaction as to completion and receipt of Certificate of Substantial Completion / Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite

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notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;

(d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the IOCL Captive Jetty Project ;

(e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the IOCL Captive Jetty Project ;

(f) Providing road connectivity from the existing road to the Leased Premises at the time of operation of the Terminal;

(g) prior to the Date of Commercial Operation of IOCL Captive Jetty Project Facilities, carry out the required capital dredging of the common user outer channel at the Port so as to provide the channel width and depth for manoeuvring cargo vessels of maximum 250 m LOA, 34 m beam and -14.5 m draft;

(h) extend the Concession Period, in the event that default by the Concessioning Authority in complying with the requirements in respect of: (a) direct road connectivity as detailed in sub-article 6.5 (f) and/or; (b) capital dredging of the common user outer channel as detailed in sub-article 6.5 (g), causes any delay in achieving the Date of Commercial Operation, such extension being equal in duration to the period by which the Date of Commercial Operation is delayed;

(i) Provide water depths at IOCL Captive Jetty area, approaches to the Captive jetty and basin as prescribed at Point 2 of Appendix 2 during operation of the IOCL Terminal; and

(j) Provide marine services such as pilotage, Tugs etc. on chargeable basis as per KPL Scale of Rates applicable / notified from time to time.

6.6 Suspension of Works

(a) Upon recommendation of the Independent Engineer to this effect, the Concessioning Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioning Authority, such work is not in

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accordance with the Construction Standards / Safety Standards.

(b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioning Authority and thereupon represent to the Concessioning Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioning Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

(a) At least 60 (sixty) Days prior to the likely completion of the IOCL Captive Jetty Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the IOCL Captive Jetty Project meets with the Construction Standards (**"the Tests"**). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioning Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;

(b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results;

(c) Upon completion of Construction Works and the Independent Engineer deter mining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioning Authority a Completion Certificate substantially in the form set forth in Appendix 10;

(d) The Independent Engineer may, at the request of the Concessionaire, issue

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a provisional certificate of completion substantially in the form set forth in Appendix 10 (the **"Provisional Certificate"**) if the Tests are successful and the IOCL Captive Jetty Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **"Punch List"**) to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioning Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioning Authority shall be entitled to terminate this Agreement;

6.8 Operations during Construction Phase

The Concessionaire may, even during the Construction Phase, carry out operations subject to issuance of Certificate of Substantial Completion and requisite approvals in this regard and at its own cost and risk, provide services in relation to the IOCL Captive Jetty Project even before Completion Certificate is issued with respect to the construction works, for a maximum period of 8 (eight) Months from the date of issuance of Certificate of Substantial Completion. The Concessionaire shall pay Waterfront Royalty as set forth in Article 9.2 from the date when it commences operations

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligation on or before a milestone date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed **5% (five percent)** of the **Estimated Port Project cost** and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided

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are a genuine pre-estimate of the damages the Concessioning Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of the **5% (five percent)** of the **Estimated Project Cost**, the Concessioning Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioning Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

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ARTICLE 7

OPERATIONS & MAINTENANCE

7.1

(a) Obligations of the Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) Berth and Terminal Operations:

The Concessionaire shall:

(a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;

(b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;

(c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;

(d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;

(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions;

(f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;

(g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;

(h) The concessionaire, IOCL shall endeavour to berth their vessels on first come first serve basis on its captive jetty, while reserving the right to

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berth the vessels based on its priority.

(i) ensure maintenance of proper and accurate record / data / accounts relating to operations of the Project Facilities and Services;

(j) obtain, maintain and comply with Applicable Permits including customs and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;

(k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and

(l) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) Tugs and Marine Craft

KPL will provide marine services such as pilotage, tugs etc. on chargeable basis as per KPL Scale of Rates applicable from time to time

(iii) Repairs and Maintenance

The Concessionaire shall, at its own cost:

(a) repair as necessary and maintain the Project Facilities & Project facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities & Project facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipments; and

(b) maintain the Project Facilities & Project facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities & Project facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iv) Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with

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Good Industry Practice so as to ensure that the Project Facilities & Project facilities and Services commensurate with the Project Requirements, at all times during the Concession Period.

(v) Repairs, Replacement or Restoration

The Concessionaire shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities & Project facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever.

(vi) Removal / Replacement of Assets

Except as provided/authorized under this Agreement the Concessionaire shall not, without the prior written intimation to the Concessioning Authority, remove or replace any assets comprised in the Project Facilities & Project facilities and Services . Such notice shall contain the exact details of the assets that the Concessionaire intends to remove and/or replace, its reasons for doing so and the likely period for replacement.

(vii) Payments to the Concessioning Authority

The Concessionaire shall make/ensure payments to the Concessioning Authority as per Article 9.

(viii) Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioning Authority for purposes of verifying that the Project/the Project Facilities & Project facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioning Authority provide the authorized representatives of the Concessioning Authority access to the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioning Authority for conducting a safety audit and verifying that the IOCL Captive Jetty Project & Project Facilities and Services are in strict compliance with the Safety Standards.

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(ix) Reports

The Concessionaire shall provide to the Concessioning Authority, Monthly reports on cargo traffic and discharge rate at berth in respect of Project Facilities and Services within 15 (fifteen) Days following the end of each month, and any other information relating to operations which the Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives.

(x) Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessionaire Authority may specify from time to time.

(xi) Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site and with respect to the IOCL Captive Jetty provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioning Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

(xii) Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel.Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

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(xiii) Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo handling of the levels set out in Appendix 13 ("**Minimum Guaranteed Cargo**") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

(xiv) Indemnity Against Claims for Loss of Goods

Notwithstanding anything contained in the provisions of the Company Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "**Action**") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioning Authority, its officers, employees, agents and representatives (the "**Indemnitees**") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement. If any order is passed against the Indemnities (monetary or otherwise), it shall be the sole responsibility of the Concessionaire to satisfy/pay off to the complete satisfaction of the Concessioning Authority.

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(b) **Obligations of the Concessioning Authority**

In addition to any of its other obligations in this Agreement, the Concessioning Authority shall arrange for and provide the following:

(i) **Marine and Port Services**

The Concessioning Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

(a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a priority basis subject to priority berthing norms and the sailing schedule as determined by the General Manager (MS) / Deputy Conservator of the Port, in consultation with IOCL for berthing their vessels at Captive Jetty depending on individual ship characteristics and tidal conditions;

(b) engaging and deploying pilots licensed by the (Government of India or any other competent) authority for such purpose as applicable, for pilotage operations on a 24-hour basis (subject to safe navigational conditions), at the IOCL Captive Jetty Project Facilities;

(c) maintenance of the common user outer channel for manoeuvring IOCL cargo vessels of maximum 250 m LOA, 34 m beam and -14.5 m draft;.

(d) waterside safety and safety of navigation;

(e) maintaining water depths at IOCL Jetty area, approaches to the IOCL Jetty and basin as prescribed at Point 2 of Appendix 2.

(f) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the project facilities and services;

(g) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the project facilities and services;

(h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project site and Port Assets; and

(i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.

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(ii) **Approvals**

The Concessioning Authority shall promptly grant approvals / consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

7.2 Utilities and Services

The Concessioning Authority shall during the Concession Period provide access to the Concessionaire to all infrastructure facilities and utilities including water, electricity and telecommunication facilities necessary for the implementation, operations and maintenance of the Project / Project Facilities and Services in accordance with this Agreement, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers availing substantially equivalent facilities and utilities. Provided unless otherwise agreed to by the Concessioning Authority:

(a) the power made available shall be as received by the Concessioning Authority from Tamil Nadu Electricity Board (TNEB). The take off point for electricity shall be from the substation at Common substation located not more than 7 Kms from the Main gate of Port.

(b) the water made available shall be as received by the Concessioning Authority from Chennai Metropolitan Water and Sewerage Supply Board (CMWSSB). The take off point for water shall be the nearest available water line;

(c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioning Authority, install meters to measure the consumption of power and water. The Concessioning Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;

(d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

7.3 Liability for shortfall in performance

In the event the Concessioning Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioning Authority shall calculate the amount of liquidated damages payable

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by the Concessionaire in accordance with Appendix 11 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioning Authority which shall be considered by the Concessioning Authority on merits and the Concessioning Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire

It is clarified that this provision does not prejudice the rights of the Concessioning Authority upon a Concessionaire Event of Default as set out in Article 15 including the Concessioning Authority's right to terminate this Agreement which shall remain unaffected.

The Concessionare and Concessioning Authority agree to draw up mutually agreed performance standards and bonus/penalty clause.





ARTICLE 8

LAND LEASE AGREEMENT

8.1 At present Concessioning Authority is in peaceful possession of the land admeasuring approx 5 acres of land closer to the present LNG terminal for setting up of IOC Terminal (leased premises) to be handed over to the concessionaire for development of terminal facilities for IOCL Cargo Jetty at Kamarajar Port. However, the change of name in Revenue records is yet to be made which will be done after Concessioning Authority gets title in its favour. Pursuant to Concessioning Authority getting the title of the land registered in its name, lease agreement in favour of Concessionaire would be executed for a period of 30 years. Pending execution and registration of the lease agreement (Appendix 14), Concessionaire can proceed with the construction activity on the said land.

8.2 The Concessionaire shall pay the entire lease rent for a period of 30 years in terms of Article 9.1 and at the time of execution and registration of the lease agreement, no further lease rent shall be payable by the Concessionaire to the Concessioning Authority

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ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project site and Port Assets and the equipment comprised in the Port Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority.

i. **Rs. 3,86,70,000/- (Rupees Three crores eighty-six lakhs and seventy thousand) plus applicable service tax,** towards single upfront Lease rent (License Fee) for 30 years for the leased premises of approx 5 acres for Development of terminal facilities for IOCL Cargo Jetty. (This is indicative and to be calculated as per the prevailing scale of rates. It has to be re worked based on the date of demand and actual land area given on lease by KPL.) The effective date shall be from the Date of Award i.e. after 180 days from the date of concession agreement in line with Article 3.2 or provision of EC whichever is later.

ii. **Rs. 40,470/- (Rupees Forty thousand four hundred and seventy) plus applicable service tax,** if any, towards Security Deposit for the leased premises of approx 5 acres of land for IOCL terminal. The amount would have to be reworked based on actual land area to be leased.

Note:

The amount indicated for 9.1(a)(i) and (ii) for Single Upfront Lease rent (License Fee), Security Deposit, etc., are provisional only and the same would be worked out based on the provision of Land Policy issued by Ministry of Shipping and KPL Scale of Rates on the date of demand and actual land area given on lease by KPL.

iii. Towards license fee for water front area for construction of jetty, berthing dolphins etc., the sum of **Rs. 7,20,983/- (Rupees Seven lakhs twenty thousand nine hundred and eighty three) per Annum plus applicable service tax,** worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (the "**License Fee**") considering waterfront area of 300mx35m. The amount would have to be reworked based on actual waterfront area. Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession i.e. after 180 days from the date of concession agreement in line with Article 3.2 or provision of EC whichever is later.

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iv. Way leave charges for the approach trestle and pipe line corridor **the sum of Rs. 135.20 / RM/Annum (Rupees one hundred and thirty five and twenty paise per Running Meter per Annum Only)** plus applicable service tax for each pipeline of **8"** and above **dia** and **sum of Rs. 67.60 / RM/Annum (Rupees sixty seven and sixty paise per Running Meter per Annum Only)** plus applicable service tax for each pipeline lesser than **8"** dia, worked out in prevailing scale of rates which is subject to escalation as notified by the Company from time to time (the "**Way leave charges**"). Such amount shall be paid by the Concessionaire in half yearly instalments in advance before 5th of the first month of the relevant half year from the date of award of concession i.e. after 180 days from the date of concession agreement in line with Article 3.2 or provision of EC whichever is later.

(b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI Base Rate plus 2% (two percent) per annum on the amount outstanding.

9.2. Payments of Waterfront Royalty

(a) The Concessionaire shall pay to the Concessioning Authority, Waterfront Royalty per tonne of cargo unloaded at the IOCL Captive Jetty . Such Waterfront Royalty payments shall be based on the actual cargo throughputs achieved, which shall be determined on the basis of customs declarations, in the absence of which, the declaration given by the ship surveyor appointed to certify the quantity of IOCL cargo unloaded shall be considered.

(b) Waterfront Royalty for **IOCL Captive POL products cargo** shall be **Rs. 50 per KL** (Rs. Fifty only) as on 1.1.2016 and waterfront royalty for **IOCL Captive LPG cargo** shall be **Rs. 125 per tonne** (one hundred and twenty five only) as on 1.1.2016.

(c) The Waterfront Royalty for cargo shall be subject to revision based on the variation in the Wholesale Price Index (WPI). Such revision shall be based on the indexation against **60% of the variation in the WPI** for a relevant year beginning 1st January and 31st December.

(d) The Waterfront Royalty shall accrue from the date of commencement of operations of Captive Jetty Project Facilities. The payment of Waterfront Royalty shall commence from the Month following the Month in which the date of commencement of operations of IOCL Captive Jetty Project Facilities occurs.

Notwithstanding anything contained hereinabove, no Waterfront Royalty is payable for the first two ship loads of LPG / POL brought for the pre-commisioning activities.

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(e) Waterfront Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.

(f) The Concessionaire shall submit for verification to the Concessioning Authority, the required statutory documents to ascertain the cargo throughput achieved per vessel.

(g) Waterfront Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI Base Rate plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

(h) As security for the payment of the Waterfront Royalty, the Concessionaire shall arrange bank guarantee(s) to be provided from one or more reputable scheduled bank(s) as acceptable to the Concessioning Authority before the date of commencement of operations of IOCL Captive Jetty Project Facilities, in favour of the Concessioning Authority. The value of the bank guarantee(s) for the period upto the end of the first Financial Year from the date of commencement of operations shall be equal to the average of the projected Monthly Waterfront Royalty for the first Financial Year and thereafter the value of the same shall be revised by the end of expiry of 7 (seven) Days of each Financial Year to an amount equal to the average of previous year's Monthly Waterfront Royalty payments. The Concessionaire shall ensure that the aforesaid bank guarantee is kept renewed and valid throughout the term of this Concession Agreement. Failure to keep the guarantee renewed and valid as aforesaid shall tantamount to a material breach of the Concession Agreement

9.3 Payment of Port Dues and Pilotage Charges

The Concessionaire or its authorised agent or the agent of the vessel, as the case may be, shall pay to the Concessioning Authority: (a) Port Dues; and (b) Pilotage Charge as per KPL's Scale of Rates approved and notified from time to time by KPL.

9.4 Utilities or Services

The Concessionaire shall also pay rent or other charges for any premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be twice the Scale of Rates as may be notified by the competent authority in respect thereof from time to time.

9.5 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including

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agreements and documents with respect to all capital and debt raised by the Concessionaire, and capital expenses towards the IOCL Captive Project.

The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioning Authority and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period ("**Special Audit**").

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ARTICLE 10

ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

(a) Land and Water Area

The ownership of the Project Site and Port's Assets shall always remain vested with the Concessioning Authority. The rights of the Concessionaire in the Project Site and Port's Assets shall only be that of a bare licensee of such assets and the Concessionaire shall neither assign, transfer, sublet, create any charge or Encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Port's Assets or Project Site. Further, any such rights of the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the Concessionaire's rights in the Project Site and/or the Port's Assets shall cease without the need for any action to be taken by the Concessioning Authority upon the termination of this Agreement for any reason whatsoever.

(b) Assets created or provided by the Concessionaire

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and in the Port Assets pursuant to this Agreement shall, until expiry of this Agreement or transfer to the Concessioning Authority on Termination in accordance with this Agreement, be with the Concessionaire. However, such ownership of buildings etc. erected by the Concessionaire at the Project Site and Port Assets shall not be construed as and shall not confer any rights in the Project Site or other Port Assets upon the Concessionaire, save as that of a bare licensee as provided for in this Agreement.

10.2 Permitted Charge on Assets

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project Site and Port Assets nor encumber the Project Site and the Port Assets.

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Provided further, in the event of termination of this Agreement, the said charge shall stand extinguished upon payment of compensation by the Concessioning Authority to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.





ARTICLE 11

SHAREHOLDING

11.1 Ownership Structure

The Concessionaire, M/s. IOCL, a company incorporated under the Indian Companies Act, 1956, having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai – 400 051.

Current shareholding pattern of IOCL for the IOCL Captive Jetty Project as on 01.04.2016 is as detailed below:

Sl.No	Name	% Shareholding (paid up Capital)
1.	Indian Oil Corporation Limited	100

11.2 Shareholding

The Concessionaire shall ensure that the promoting company namely, M/s. Indian Oil Corporation Limited (IOCL) shall for the duration of the Concession Period be the Lead Member and maintain their equity holding such that the shareholding of the promoting company shall not be below 26% (twenty six percent) of the paid up equity capital of the Concessionaire. Any change in the shareholding pattern shall be communicated by the concessionaire to Concessioning Authority within 60 days.

11.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

The promoting company of the Concessionaire namely, M/s. Indian Oil Corporation Limited (IOCL) shall within 6 (six) Months from the Date of Award of Concession, provide an undertaking to the Concessioning Authority stating that the shareholding in the Concessionaire shall not be below 26% (twenty six percent) of its Paid up equity capital throughout the Concession Period and any dilution in the said Paid up equity capital shall be only with the prior approval of the Concessioning Authority which consent shall not be unreasonably withheld. Any such dilution shall be only to a Public Sector Undertaking of Central/State Government of India.

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ARTICLE 12

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.

(b) Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the IOCL Captive Jetty Project / project facilities & Project facilities and services.

(c) Insurance

(i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

(a) builder's all risk insurance;

(b) loss, damage or destruction of the Project Facilities and Services, at replacement value;

(c) comprehensive third party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site and port's assets.

(d) workmen's compensation insurance;

(e) marine cum storage cum erection insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the IOCL Captive jetty Project and the

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Project site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and all insurable risks associated with the IOCL Captive jetty Project to the extent advisable in accordance with Good Industry Practice (**"Insurance Cover"**).

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioning Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioning Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to

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Concessioning Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ SBI Base Rate plus 2% (two percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning Authority by exercising right of set off or otherwise.

(vi) Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter-alia, the Concessioning Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(d) Indemnification

The Concessionaire shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessioning Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioning Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Concessionaire or as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any

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failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of the Project site and Port Assets and/or construction, operation and maintenance of the Project Facilities and Services.

(e) Assignability

Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Concessioning Authority.

Provided, the Concessionaire may assign its rights, interests and benefits under this Agreement to the Lenders as security for the Financial Assistance. Provided further, nothing contained in this Article shall:

(i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; and

(ii) authorize or be deemed to authorize the Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

(f) Engagement of Contractors

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of civil/ mechanical/ electrical engineering structures/ equipment, and/or operation and maintenance of the IOCL Captive Jetty Project / project facilities & Project facilities and services.

Provided:

(i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equiipment or any part thereof and for the operation and

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maintenance of the IOCL Captive jetty Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

(ii) the Concessionaire should have obtained requisite security clearance dfor the Contractor the Concessionaire intends to engage;

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

(iv) any contract that it enters with an Affiliate in respect of the IOCL Captive jetty Project shall be on an arms length basis.

(g) Condition Survey

(i) The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioning Authority may itself cause the condition survey and inventory of the Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioning Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.

(ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioning Authority a guarantee issued by a scheduled bank in India for a sum equivalent to 3% of the Estimated Project Cost for the IOCL Captive jetty Project at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioning Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

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(h) The Concessionaire shall permit the Concessioning Authority to utilize the berthing and other facilities in the Project site and Port Assets, when they are not in use by the Concessionaire, as per mutually agreed terms and conditions. The Concessionaire shall also endeavour to enter into arrangements with other users in the area for sharing common utilities.

12.2 Of the Concessioning Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

The Concessioning Authority shall, at the written request of the Concessionaire, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

(b) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Project site and Port Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioning Authority.

(c) Competing Facilities

The Concessionaire shall have the first right of refusal for creation of any additional Captive LPG / POL facility being developed by the Concessioning Authority at Kamarajar Port.

(d) General rights of inspection and verification

The Concessioning Authority may during the pendency of the Agreement itself or by appointment of Experts verify the performance of obligations of the Concessionaire as set out in this Agreement.

12.3 Of the Concessioning Authority and the Concessionaire

(a) Compliance with Laws and Regulations

The Parties shall perform their respective obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

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(b) **Rights to Documents**

(i) **Concessioning Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the IOCL Captive Jetty Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioning Authority, be returned by the Concessionaire to the Concessioning Authority on the Transfer Date.

(ii) **Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the IOCL Captive Jetty Project / Project facilities & Project facilities and services shall be handed over by the Concessionaire to the Concessioning Authority free of cost on the Transfer Date.

(iii) **Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

(iv) **Obligation to Cooperate**

The Parties shall mutually co-operate with each other in order to achieve the objectives of this Agreement.

(v) **Substitution Agreement**

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioning Authority of the Lenders' readiness to execute the same.

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ARTICLE 13

CHANGE IN LAW

13.1 Change in Law

"**Change in Law**" means any of the following events which has a Material Adverse Effect:

(a) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or

(b) the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or

(c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided any: (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iv) any rules or regulations stipulated by TAMP or other regulatory authority having jurisdiction over the IOCL Captive Jetty Project in respect of the standards of service shall not constitute a Change in Law.

13.2 The Concessionaire's Remedy

(a) In the event of Change in Law the Concessionaire may propose to the Concessioning Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such

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Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

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ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure Event

As used in this Agreement, Force Majeure Event means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Articles 14.2, 14.3 and 14.4 respectively including the impact / consequence thereof which:

(a) is beyond the control of the Party claiming to be affected thereby (the "**Affected Party**");

(b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and

(c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

14.2 Non-Political Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

(c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;

(d) the discovery of geological conditions, toxic contamination or archeological remains on the Project site and Port Assets that could not reasonably have been

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expected to be discovered through a site inspection; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

(a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;

(b) action of a Government Authority having Material Adverse Effect including but not limited to: (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the IOCL Captive Jetty Project / Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;

(c) early determination of this Agreement by the Concessioning Authority for reasons of national emergency, national security or the public interest;

(d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

Any of the following events which prevents the Affected Party from performing any of its obligations under this Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry wide or State wide strikes or industrial action;

(c) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings

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which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings: (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(d) Failure of concessionaire to handle cargo from the Terminal due to any reasons beyond the control of the concessionaire.

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

(a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "**Notice**") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

(b) The Notice shall inter-alia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly / Monthly) written reports containing the information called for by Article 14.5 (b) and such other information as the other Party may reasonably request.

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14.6 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

(b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Costs, Revised Timetable

(a) Costs

Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

(b) Extension of time/period

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Concession Period by the Concessioning Authority in appropriate cases if permissible under





Applicable Law.

14.10 Termination Due to Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 365 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 365 days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

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ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

Event of Default means the Concessionaire Event of Default or the Concessioning Authority Event of Default or both as the context may admit or require.

(a) The Concessionaire Event of Default

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Concessioning Authority Event of Default or a Force Majeure Event:

(i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;

(ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;

(iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;

(iv) Delay in payment of Waterfront Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;

(v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the IOCL Captive Jetty Project/the Project Facilities and Services, materially;

(vi) the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. [Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;]

(vii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

(viii) the Concessionaire passing a resolution for voluntary winding up;

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(ix) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

(x) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

(xi) levy of an execution or destraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the IOCL project / project facilities & Project facilities and services, materially and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days;

(xii) the Performance Guarantee is not maintained in terms of the provisions hereof;

(xiii) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

(xiv) a change in shareholding such that the beneficial interest of the promoting companies of the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;

(xv) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and without the Concessioning Authority's prior written approval. Provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the ability, demonstrated to the satisfaction of the Concessioning Authority, to undertake, perform/discharge the obligations of the Concessionaire under this Agreement, necessary approval shall be granted by the Concessioning Authority;

(xvi) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence

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under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) The Concessioning Authority Event of Default

(i) the Concessioning Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.

(ii) any representation made or warranties given by the Concessioning Authority under this Agreement is found to be false or misleading.

(iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Project site and Port Assets in any legal proceedings initiated against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

(iv) levy of an execution or destraint on the Project Site in any proceedings against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

(a) Upon the occurrence of the Concessionaire Event of Default, the Concessioning Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

(b) Upon the occurrence of the Concessioning Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of

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Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("**Consultation Notice**").

15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree ("**Remedial Period**") the Parties shall, in consultation with the Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a Concessionaire Event of Default, the Concessioning Authority shall in consultation with the Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

(a) the change of management or control/ownership of the Concessionaire;

(b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:

(i) the criteria for selection of the Selectee;

(ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

(iii) handing over/ transfer of the Project site and Port Assets and the Project Facilities and Services to the Selectee;

(iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;

(v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and

(vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or

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suffered on account of the underlying failure/breach.

15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Article 15.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

15.7 Termination due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8 Concessioning Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire Event of Default, the Concessioning Authority may, at its discretion:

(a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;

(b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Site/Project Facilities and Services;

(c) step in and succeed upon election by Concessioning Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

Provided that, in such circumstances, the Concessioning Authority shall assume the obligations of the Concessionaire with respect to the Lenders during such Remedial Period out of the current revenues. Provided further, the Concessionaire acknowledges that any payments made by the Concessioning Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioning Authority to the Concessionaire in terms of the provisions of this Agreement.

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ARTICLE 16

TERMINATION OF THE CONCESSION / AGREEMENT

16.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated without any further notice.

16.2 Obligations during Termination Period

During Termination Period, the Parties shall subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the Concessioning Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioning Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely compensation payable by the Concessioning Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioning Authority.

(a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;

(b) data or records regarding the operation and maintenance of the Project Facilities and Services;

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(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

(d) any other information or records regarding Concessionaire, its business, the IOCL Captive Jetty Project / Project Facilities & Project facilities and Services, assets and liabilities.

The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition furnish the particulars called for by the Concessioning Authority.

16.4 Condition Survey

(a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioning Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioning Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Concessioning Authority on the Transfer Date.

(b) If, as a result of the condition survey, the Concessioning Authority shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

(c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessioning Authority may itself cause the condition survey and inventory of the Project Facilities and Services to be conducted. The Concessioning Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

16.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law:

(a) the Concessionaire shall transfer all the assets and rights upon expiry of the

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Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;

(b) the Concessioning Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessioning Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, the Concessioning Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re- employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the IOCL Captive Jetty Project, and the handback of the Project Site /Project Facilities & Services by the Concessionaire to the Concessioning Authority shall be free from any such obligation.

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ARTICLE 17

COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

(i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to a Other Event, compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioning Authority Event of Default under Article 17.1 (c).

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Agreement.

(b) Termination due to Concessionaire Event of Default

If the termination is after the Date of Commercial Operation, due to a Concessionaire Event of Default, the compensation payable by the Concessioning Authority to the Concessionaire shall be the lowest of:

(i) the Book Value;

(ii) 90% (ninety percent) of Debt Due;

(iii) the Actual Project Cost;

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Agreement.

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(c) **Termination due to Concessioning Authority Event of Default**

If the termination is due to a Concessioning Authority Event of Default, the compensation payable by the Concessioning Authority shall be equal to the aggregate of: (i) Debt Due; plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site and the Project Facilities and Services free of cost and Encumbrance.

17.3 Transfer Fee and Charges

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of this Agreement shall be borne by:

(a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;

(b) the Concessioning Authority in the event of termination due to an Concessioning Authority Event of Default or Political Event; and

(c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

17.4 Payment of Compensation to Lenders

The Concessionaire hereby irrevocably authorises the Concessioning Authority to pay to the Lenders or at their instruction to any designated bank account in India the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioning Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of its assets taken over by the Concessioning Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessioning Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessioning Authority in respect of Concessioning Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

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Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Lenders as the case may be shall be entitled to remove at its/ their cost all such movables which are not taken over by the Concessioning Authority and to deal with the same in accordance with their respective rights under law.

Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Lenders is furnished by the Concessionaire to the Concessioning Authority, the compensation shall be paid by the Concessioning Authority to the Concessionaire directly.

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioning Authority fails to pay the compensation on the Transfer Date, the Concessioning Authority shall be liable to pay interest @ SBI Base Rate plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioning Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioning Authority:

(a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities; and

(b) account for and pay to the Concessioning Authority, the charges for the Project Facilities and Services as per the Scale of Rates as notified by the TAMP or such other competent authority from time to time. In case, no charges are notified by the TAMP or such other competent authority, charges shall be levied based on the adhoc rate(s) authorized by the Concessioning Authority, subject to regularizing it subsequently on its notification by the TAMP or such other competent authority.

In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioning Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned, gross revenue, Waterfront Royalty, Port Dues and Pilotage earned by the Concessioning Authority from the IOCL

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Captive Jetty Project during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioning Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioning Authority is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning Authority. Provided however, the Concessionaire shall be liable to pay Waterfront Royalty in accordance with Article 9.2.

17.7 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

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ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 16, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in Articles 18.2 and 18.3.

18.2 Concessionaire's Obligations

The Concessionaire shall;

(a) hand over peaceful possession of the Project Site, Port's Assets, the IOCL Captive Jetty Project, and the Project Facilities and Services free of Encumbrance;

(b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessioning Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

(c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Project Facilities and Services;

(e) transfer or cause to be transferred to the Concessioning Authority any IOCL Captive Project Contracts which are: (i) valid and subsisting; (ii) capable of being transferred to the Concessioning Authority; and (iii) those the Concessioning Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioning Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favour of the Concessioning Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred / assigned and/or are not required to be transferred / assigned to the Concessioning Authority;

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(f) at its cost, transfer to the Concessioning Authority, all such Applicable Permits which the Concessioning Authority may require and which can be legally transferred. Provided, if the termination is on account of Concessioning Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioning Authority; and

(g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site / Port's Assets, any movable assets that are not taken over by or not to be transferred to the Concessioning Authority in terms of the provisions of this Agreement.

18.3 Concessioning Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioning Authority shall pay compensation payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Lenders, or deposit the same on the written instructions of the Lenders to any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the Concessioning Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of the assets shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge.

The Concessionaire further confirms that payment of compensation by Concessioning Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessioning Authority in respect of Concessioning Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

18.4 Risk

Until transfer in accordance with this Article 18, the Port's Assets and the Project Facilities and Services shall remain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessioning Authority under this Agreement.

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ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessioning Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

19.2 Assistance of Expert

The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The cost of obtaining the service of the Expert shall be shared equally.

19.3 Arbitration

(a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the Presiding Arbitrator within 30 (thirty) days of the appointment of second Arbitrator. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as "Sole Arbitrator"

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(b) **Place of Arbitration**

The place of arbitration shall be Chennai, India.

(c) **English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) **Procedure**

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

(e) **Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) **Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

(g) **Performance during Arbitration**

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

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ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

(a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;

(e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;

(f) it has the financial standing and capacity to undertake the IOCL Captive Jetty Project in accordance with the terms of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(i) it has complied with Applicable Laws in all material respects and has not been

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subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(j) all its rights and interests in the IOCL Captive Jetty Project / Project Facilities & Project facilities and Services shall pass to and vest in the Concessioning Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessioning Authority, and that none of the IOCL Captive Jetty Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioning Authority or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioning Authority in connection therewith;

(m) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and

(n) consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

20.2 Representations and Warranties of the Concessioning Authority

The Concessioning Authority represents and warrants to the Concessionaire that:

(a) it is duly organised, validly existing and in good standing under the laws of India;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and

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performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessioning Authority, enforceable against it in accordance with the terms hereof; and

(e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

20.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

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ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the IOCL Captive Jetty Project is the Chart Datum (0.000) which is **0.54 m** below mean sea level.

21.2 Survival of Obligations

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Concession Period/ termination of this Agreement.

21.3 Articles to survive Termination

The provisions of Articles 16 to 21 shall, to the fullest extent necessary to give effect thereto, survive the Concession Period/the termination of this Agreement and the obligations of the Parties to be performed/discharged following the termination /early determination of this Agreement shall accordingly be performed /discharged by the Parties.

21.4 Joint Responsibility

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Concessioning Authority and partly due to the negligence or default or omission on the part of the Concessionaire, each Party shall be liable to the other Party only in the proportion to its respective degree of negligence or default or omission, as the case may be.

21.5 Several Obligations

Nothing contained in this Agreement shall be construed to create an association,

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trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

21.6 Severability

If for any reason whatsoever any provision or any part(s) of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession shall be constructed as if such provision or such part(s) of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.

21.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioning Authority:

CHAIRMAN & MANAGING DIRECTOR,
KAMARAJAR PORT LIMITED,
4th Floor, Erstwhile DLB Building, Rajaji Salai
Chennai – 600001.

The Concessionaire:

EXECUTIVE DIRECTOR I/C (SUPPLIES),
INDIAN OIL CORPORATION LIMITED
G-9, Ali Yavar Jung Marg, Bandra (East),
Mumbai – 400 051.

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or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

21.8 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.9 Amendments, Modifications or Alterations

No amendments, modifications or alterations of or any additions to the terms and conditions of this Agreement shall be valid unless the same be in writing and agreed to by the Parties.

21.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Republic of India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Agreement.

21.11 Entire Agreement

This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement and the Appendices, by reference or otherwise, are abrogated and withdrawn.

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IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this

Agreement on the dates first herein above written:

Common Seal of the Concessioning Authority is affixed in the presence of **Mr.M.A.Bhaskarachar** who has signed this Agreement in token thereof.

Signed and Delivered by the Concessionaire by the hand of its authorized representative **Mr.P.K.Das** who has signed this Agreement in token thereof

Witnesses:

1. (C. SENTHILKUMAR)
   EXECUTIVE DIRECTOR (REG. SERVICES), SR
2. V. KRISHNA SAMY,
   GM (CS & BP)
   KAMARAJAR Port Limited.

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APPENDIX 1

PROJECT SITE

1. **Physical conditions:** The IOCL Captive Jetty is proposed on the Southern side of the North Break water as a Jetty with Mooring Dolphins and approach Trestle to the break water. The Berth is proposed on the South west side of the existing Marine Liquid Jetty-1, as more particularly marked and shown in the attached drawing.

   Site Conditions: The Concessioning Authority shall provide Water front area of size approx 300 Meter (length) X 35 Meter (breadth). (Depending upon the final design) and land of approx 5 Acres within Port premises (In between the LNG Regassification plant and MLT-1 Tank farm area) for terminal facilities in as is where is condition for development of IOCL Captive Jetty Project. The location of IOCL Captive Jetty is attached below

2. **Road Infrastructure**
   The Concessioning Authority shall provide road access to the leased premises at the time of operation of the Terminal.

   The Concessionaire is permitted to construct, operate and maintain road infrastructure within the boundary limits of the leased premises.

3. **Security Arrangements**

   CISF looks after the general security of the port and manning the gates. The Concessionaire shall abide by the security regulations / procedure as stipulated by the Concessioning Authority from time to time. The Concessionaire shall provide its own security arrangements for his assets.

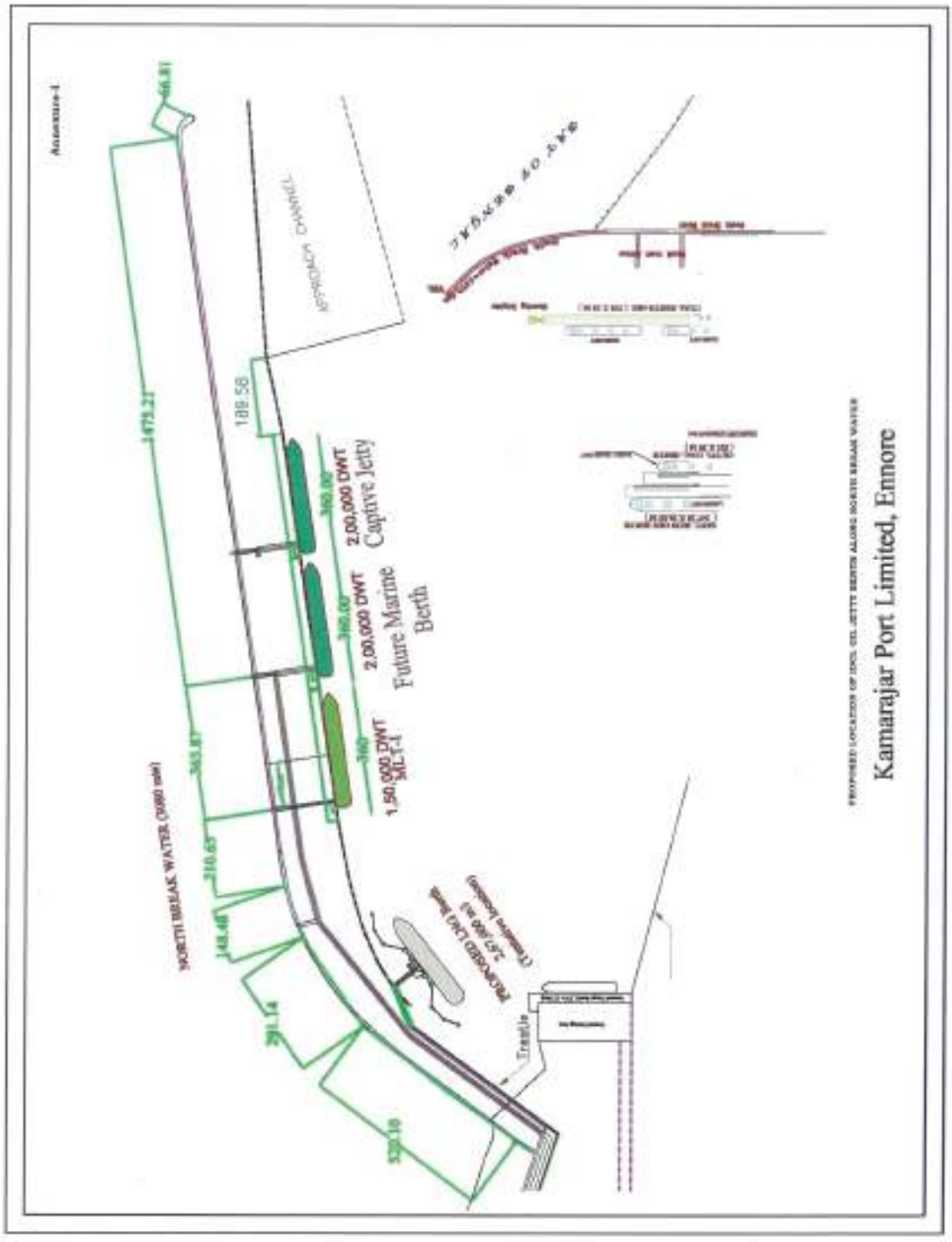
4. **Port Entry**

   Entry into Port is based on prior permission. The Concessionaire has to obtain entry passes for the entire work force, tools, vehicles, equipments, etc, deployed for construction and operation of the Terminal. The entry passes for work force and vehicle will be issued on payment of processing fee.

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PROPOSED LOCATION OF IOCL CAPTIVE JETTY PROJECT SITE



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APPENDIX 2

PORT'S ASSETS

1. LAND

(a) The Concessioning Authority shall provide waterfront area of approx 300 m long and 35 m wide on the South west side of the existing Marine Liquid Jetty-1 for the development of Jetty with Mooring Dolphins and approach Trestle to the break water and other related facilities.(Depending upon the final design).

(b) The Concessioning Authority shall provide approx 5 acres of land for development of terminal and other related facilities inside the port boundary.

(c) Pipeline corridor (Right of Way) for transporting cargo through pipelines from Jetty to the Booster pumping station and further till port premises located around 4.8 kms from jetty.

2. DREDGING

At the time of operation of terminal, the Concessioning Authority shall provide the depths as follows in the port,

- -16 m CD at the water front alongside berth / jetty.
- -16.5 m CD at the basin and
- -17 m CD at the approach and entrance channel

The Concessioning Authority may consider, if commercially viable, for further deepening of the channel, basin and alongside of the berth depending on the vessel characteristics and the requirement at the request of the Concessionaire, but is not obliged to do so.

3. SUPPLY OF POWER & WATER

As per clause 7.2, the concessionaire shall at its cost, make arrangements for power, water and other utilities for the construction as well as operations of the terminal. The Concessionaire shall be liable for all payments to the concerned authority for power, water and other utilities required for the project during construction and operation phase.

4. LIGHTING

The Concessioning Authority will undertake general lighting of the port. The lighting within the premises of the terminal would be the responsibility of the Concessionaire.

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5. SEWERAGE SYSTEM

At present no sewerage system is available at port. The Concessionaire shall make its own arrangements for the same.





APPENDIX 3

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the --------- day of ---------- (Month) ---- (Year) at ----------.

AMONGST,

M/s KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001(hereinafter referred to as "KPL") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns ,

AND

M/s **Indian Oil Corporation Limited**, a company registered under the Companies Act, 1956, and having its registered office at Indian Oil Bhawan, 139, Nungambakkam High Road, Chennai – 660034 (hereinafter referred to as "IOCL") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) ,

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ---------- ---------- ---------- (hereinafter referred to as "**the Lender**").

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at---------- ---------- ---------- acting for and on behalf of the Lenders listed in Schedule I hereto (hereinafter referred as "**the Lender's Representative**").

WHEREAS,

a) By the Concession Agreement dated ____ day of _____ **2016** entered into between KPL and IOCL (hereinafter referred to as "**the Concession Agreement**"), KPL has granted to IOCL, the Concession to implement the IOCL Captive Jetty Project in terms of the provisions set out thereunder;

b) KPL has agreed to execute and register, pursuant to the KPL getting the title of the land registered in its name, Land Lease Agreement between KPL and IOCL (hereinafter referred to as "**the Land Lease Agreement**"). KPL has granted to IOCL, a lease of land admeasuring 5.00 acres or thereabouts, at Kamarajar Port and has handed over the possession to provide the IOCL Captive Jetty Terminal in terms of the provisions set out thereunder;

c) With a view to facilitate financing of the IOCL Captive Jetty project by the Lender,

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KPL and IOCL have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS SUBSTITUTION AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE-1

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereafter respectively assigned to them.

"**Substitution Agreement**" means this Agreement and includes any amendment or modification made to this Substitution Agreement in accordance with the provisions hereof.

"**Financial Assistance**" means the financial assistance set forth in Schedule A hereto, agreed to be provided by the Lender(s) to _____ for financing the IOCL Captive Jetty Project.

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt thereunder by _____ for a minimum period of 3 (three) months.

"**Financing Documents**" means, collectively, all the loan agreements, notes indentures, letters of credit, guarantee documents, debenture instruments, share subscription agreements, subordinated debt agreements and other documents, as the same may be amended, supplemented or modified from time to time, executed in favour of or entered into with the Lenders, by _____ in respect of the Financial Assistance and includes any document providing security for the Financial Assistance.

"**Lender(s)**" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to _____, from time to time.

"**Residual Concession Period**" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

"**Residual Lease Period**" means the period which shall be the remainder of the Lease Period computed from the date of issuance of Termination Notice in terms of the Land Lease Agreement.

"**Selectee**" means a Person proposed by the Lender/Lender's Representative pursuant

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to this Substitution Agreement and approved by KPL for substituting IOCL for the Residual Concession Period and Residual Lease Period, in accordance with the provisions of the Concession Agreement and the Land Lease Agreement.

"Suspension Period" means the Termination Period as defined in Article 16.1 of the Concession Agreement at the end of which all formalities connected with substitution of IOCL by the Selectee including handing over of Project site and Port Assets / Project Facilities and Services in accordance with this Substitution Agreement are completed and the substitution has become effective.

"Transaction Documents" means collectively the IOCL Captive Jetty Project Contracts, IOCL cargo terminal contracts and the Financing Documents.

1.2 Capitalized terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement / Land Lease Agreement.

ARTICLE 2

ASSIGNMENT

2.1 Assignment of rights and title

IOCL hereby agrees to assign its rights, title and interest in the Concession and the Lease to, and in favour of, the Lenders pursuant to and in accordance with the provisions of this Substitution Agreement, the Concession Agreement and the Land Lease Agreement, by way of security in respect of financing by the Lenders under the Financing Documents.

ARTICLE 3

Substitution of the Concessionaire

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders shall be entitled to substitute IOCL by a Selectee under and in accordance with the provisions of this Substitution Agreement, the Concession Agreement and the Land Lease Agreement.

3.1.2 KPL hereby agrees to substitute IOCL by endorsement on the Concession Agreement and the Land Lease Agreement in favour of the Selectee selected by the Lenders in accordance with this Substitution Agreement (For the avoidance of doubt, the Lenders shall not be entitled to operate and maintain the IOCL Captive Jetty Project

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3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders/Lenders' Representative may issue a notice to IOCL (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to KPL for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon IOCL for the purposes of this Substitution Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders/Lenders' Representative may, without prejudice to any of its rights or remedies under this Substitution Agreement or the Financing Documents, substitute IOCL by a Selectee in accordance with the provisions of this Substitution Agreement.

3.2.3 At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require KPL to suspend all the rights of IOCL and undertake the operation and maintenance of the IOCL Captive Jetty Project, and upon receipt of such notice, KPL shall suspend the rights of IOCL. Provided, such suspension shall be revoked upon substitution of IOCL by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, KPL may terminate the Concession Agreement and Land Lease Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement and Land Lease Agreement; provided that upon written request from the Lenders/Lenders' Representative and IOCL, KPL may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of IOCL default

3.3.1 Upon occurrence of a IOCL default, KPL shall by a notice inform the Lenders/Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days time to the Lenders/Lenders' Representative to make a representation, stating the intention to substitute IOCL by a Selectee.

3.3.2 In the event that the Lenders/Lenders' Representative makes a representationto KPL within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute IOCL by a Selectee, the Lenders/Lenders' Representative shall be entitled to undertake and complete the substitution of IOCL by a Selectee in accordance with the provisions of this Substitution Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and KPL shall either withhold termination and/or suspend the rights of IOCL for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Lenders/Lenders' Representative and IOCL, KPL shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding

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90 (ninety) Days.

3.4 Procedure for substitution

3.4.1 KPL and IOCL hereby agree that on or after the date of Notice of Financial Default or the date of representation to KPL under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting IOCL and taking on the rights and obligations under the Concession Agreement and the Land Lease Agreement.

3.4.2 To be eligible for substitution in place of IOCL under the Concession Agreement and the Land Lease Agreement, the Selectee shall be required to fulfill the following eligibility criteria:

(i) the Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of IOCL in respect of the Concession and Lease agreement as set forth in Article 8 under the Concession Agreement and in respect of the Lease under the Land Lease Agreement; and

(ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of IOCL to KPL under the Concession Agreement and under the Land Lease Agreement, and also payment of amounts due to the Lender(s) under the Financing Documents, upon terms and conditions as agreed to between the Selectee and the Lenders.

Provided that the Lenders/Lenders' Representative may represent to KPL that all or any of the criteria may be waived in the interest of the Project, and if KPL determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Selectee, the Lenders/Lenders' Representative shall request KPL to:

(a) accede to transfer to the Selectee the rights and obligations of IOCL under the Concession Agreement and the Land Lease Agreement; and

(b) novate the Concession Agreement and Land Lease Agreement to the Selectee such that the Selectee replaces IOCL and becomes entitled/obligated to all the rights and obligations of IOCL, for the Residual Concession Period and Residual Lease Period.

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3.4.4 If KPL has any objection to the transfer of Concession and the Lease in favour of the Selectee in accordance with this Substitution Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders' Representative. If no such objection is raised by the KPL, the Selectee shall be deemed to have been accepted. KPL thereupon shall novate the Concession Agreement and the Land Lease Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by KPL, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of IOCL.

3.5 Selection to be binding

The decision of the Lenders/Lenders' Representative and KPL in selection of the Selectee shall be final and binding on IOCL. IOCL irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or KPL taken pursuant to this Substitution Agreement including the transfer/novation of the Concession Agreement and the Land Lease Agreement in favour of the Selectee. IOCL agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the IOCL Captive Jetty Project or IOCL's shares. It is hereby acknowledged by the Parties that the rights of the Lenders/Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or KPL and IOCL shall have no right or remedy to prevent, obstruct or restrain KPL or the Lenders/ Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession and Lease as requested by the Lenders/Lenders' Representative.

ARTICLE 4

TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

IOCL shall ensure and procure that each Transaction Document contains provisions that entitle the Selectee to step into such Transaction Documents, in its discretion, in place and substitution of IOCL in the event of such Selectee assumption of the liabilities and obligations of IOCL under the Concession Agreement and the Land Lease Agreement.

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ARTICLE 5

TERMINATION OF CONCESSION AGREEMENT AND THE LAND LEASE AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders/Lenders' Representative may by a notice in writing require KPL to terminate the Concession Agreement and the Land Lease Agreement forthwith, and upon receipt of such notice, the KPL shall terminate the Concession and Lease in accordance with the Concession Agreement and the Land Lease Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to KPL is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, KPL may terminate the Concession Agreement and the Land Lease Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

KPL a n d IOCL hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders are entitled to receive from IOCL , without any further reference to or consent of IOCL, the Debt Due upon termination of the Concession Agreement and the Land Lease Agreement.

ARTICLE 6

DURATION OF THE SUBSTITUTION AGREEMENT

6.1 Duration of the Substitution Agreement

6.1.1 This Substitution Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Termination of the Substitution Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Documents.

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ARTICLE 7

INDEMNITY

7.1 General indemnity

7.1.1 IOCL will indemnify, defend and hold KPL and the Lenders/Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by IOCL of any of its obligations under this Substitution Agreement or on account of failure of IOCL to comply with Applicable Laws and Applicable Permits.

7.1.2 KPL will indemnify, defend and hold IOCL harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of KPL to fulfill any of its obligations under this Substitution Agreement, materially and adversely affecting the performance of IOCL's obligations under the Concession Agreement and Land Lease Agreement or this Substitution Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by KPL.

7.1.3 The Lenders/Lenders' Representative will indemnify, defend and hold IOCL harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders/Lenders' Representative to fulfill its obligations under this Substitution Agreement, materially and adversely affecting the performance of IOCL's obligations under the Concession Agreement and the Land Lease Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders/Lenders' Representative.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same.

The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

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ARTICLE 8

GENERAL

8.1 General

(i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Substitution Agreement.

(ii) Notices under this Substitution Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the Address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other Parties.

(iii) The expressions "KPL", "IOCL", "the Lender", "the Lenders' Representative" and "Selectee" herein used shall unless there be anything repugnant to the subject or context, include the respective successors and assigns.

(iv) This Substitution Agreement shall not be affected by reorganisation of any Lender, IOCL, or KPL, "Selectee" and the successor in the interest of the Lender, or KPL shall have the benefit of this Substitution Agreement.

(v) Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by KPL and the Lenders/Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

(vi) This Substitution Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings there under.

(vii) The consultation, recommendation or approval of the Lenders'

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Representative under this Substitution Agreement shall always be deemed as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.

(viii) This Substitution Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.

(ix) The IOCL agrees and acknowledges that it shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Substitution Agreement.

(x) No amendment, variation or modification to this Substitution Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.

(xi) All stamp duties or other imposts and charges as are applicable on this Substitution Agreement or on amendment of the Concession Agreement and the Land Lease Agreement or execution of fresh Concession Agreement and the Land Lease Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of IOCL.

(xii) The Parties hereby expressly agree that, for the purpose of giving full and proper effect to this Substitution Agreement, the Concession Agreement, Land Lease Agreement and this Substitution Agreement shall be read together and construed harmoniously. The terms of this Substitution Agreement shall prevail in the event of any inconsistency with the Concession Agreement and the Land Lease Agreement.

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the	Nature and Amount of Financing

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

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SIGNED AND DELIVERED ON BEHALF OF M/S. IOCL

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF KAMARAJAR PORT LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

---------- ON BEHALF OF The LENDERS SETFORTH IN SCHEDULE A

BY: _____

Name:

Title :





APPENDIX 4

PROJECT REQUIREMENTS

I. SUMMARY OF MARINE FACILITIES FOR IOCL CAPTIVE JETTY PROJECT:

THE MARINE FACILITIES FOR THE PROPOSED IOCL CAPTIVE JETTY SHALL BROADLY CONSIST OF T H E FOLLOWING:

A. JETTY, TRESTLE AND ACCESSORIES

1) APPROACH TRESTLE:

a) Approx. Total Length of Jetty Trestle: Approx 4800 m (Onshore – 2500 m; Offshore- 2300 m)

b) Roadway width: 4 m (Clear) (Tentative)

c) Pipe way width: 8 m (Tentative)

The alignment of the pipeline trestle and pipeline corridor would be finalized in consultation with Concessionaire and Concessioning Authority.

2) UNLOADING PLATFORM:

a) Unloading platform shall be in one level

b) Deck approx. size: 50 m X 32 m

c) Pig Launcher PL7: 25m x 16m

3) BERTHING DOLPHINS (BD):

a) Total Nos. of BD: 04

b) Approx. Deck size: 15 m X 15 m

c) Type of Fenders: Super Cell type Fender

d) Quick Release Hook (QRH) per BD: 2 X 75 Tonnes

4) MOORING DOLPHINS (MD):

a) Total Nos of MD: 06

b) Approx. Deck size: 15m X 15 m

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c) Quick Release Hook (QRH) per MD: 3 X 75 Tonnes

5) INTERCONNECTING WALKWAYS:

a) Walkway bridges shall connect the Unloading platform and different dolphins.

6) ACCESS GANGWAY TOWER

7) SHIP TO SHORE COMMUNICATION:

a) POL Carrier/ Shore Communications

b) ESD (Emergency Shutdown) system

c) Mooring Line Tension Monitoring system

8) Berthing Aid System:

a) This system will be designed to aid the vessel while berthing by using a dual laser system to supply information back to the vessel on vessel berthing angle, distance and speed of approach

II. KEY PROJECT FACILITIES

(i) Berth Length

The centre to centre distance between first and last mooring dolphin would be approx 300 meters depending on the final design.

(ii) Equipment

The Captive Jetty shall be equipped with equipment such as unloading arms, mooring hooks, cell type fenders, berthing aid system, access gangway tower, ESD system, mooring line tension monitoring system, navigation aids etc with capacity to handle at least 3 MMTPA of cargo.

(iii) Others

The personnel and other related marine facilities shall be capable of handling at least 3 MMTPA of cargo in accordance with the Performance Standards set out in Appendix 11 and Cargo carriers ranging from 5000 MT – 70,000 MT capacity.

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Annexure to Appendix 4

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

I. Construction Standards

A. General

The Concessionaire shall execute the Captive Jetty Project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO - 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

B. The Concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers.

C. In addition to complying with the requirement of relevant specifications mentioned above, the Concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory requirements.

D. Operations & Maintenance Standards: Repairs, Maintenance and Replacement

The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the Captive Jetty Project Facilities or part thereof which may be lost, damaged, destroyed or worn out.

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved Detailed Feasibility Report.

While carrying out the repairing, maintaining and replacing the Captive Jetty

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Facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, Project Facilities in trust for eventual transfer to the Concessioning Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Facilities and Services is diminished.

The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the Concessionaire premises and /or the Captive Jetty Project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.

While carrying out the repair, maintenance and replacement of the Captive Jetty Facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards or in its absence ISO/OISD Standards. In the event that the Concessionaire, by necessity or otherwise need to follow any other country standard it shall be equal or superior to the standard specified above.

E. Bulk Liquid Terminals and Tank Farms

In addition to complying to the requirement of relevant specifications mentioned above, in respect of port terminals meant for handling bulk liquids such as crude, POL, hazardous chemicals, LPG, etc., the concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory requirements.

F. Safety Standards

In addition to complying to the requirement of relevant specifications mentioned above, in respect of port terminals meant for handling bulk liquids such as crude, POL, hazardous chemicals, LPG, etc., the concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory requirements.

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 along with The Explosive Substance Act, 1983 & The Explosive Rules, 1983

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6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
11. MARPOL CONVENTION
12. International Maritime Dangerous Goods Code [Besides the above, the Concessioning Authority may prescribe standards specific to the port/project]

The Issues pertaining to Oil Spill Response System would be discussed separate to this concession agreement.

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Chennai

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APPENDIX 5

PROJECT SCHEDULE

DESCRIPTION	SCHEDULE
Substantial completion of works and issue of Certificate of Substantial Completion / Date of Commercial Operation	36 (thirty six) Months (for LPG) from 180 days after the Date of Concession Agreement or provision of EC whichever is later
Completion of works and issue of Completion Certificate / Scheduled Project Completion Date	60 (sixty) Months (for POL / LOBS) from 180 days after the Date of Concession Agreement or provision of EC whichever is later

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APPENDIX 6

DESIGNS AND DRAWINGS

The Concessionaire shall conduct geo-technical investigations, hydraulic and vessel maneuvering studies, and prepare and submit a report before the detailed layout and designs are prepared/ carried out.

The design and construction of the various components in the proposed IOCL Captive Jetty Project shall be in accordance with the recognised engineering practice and shall conform to the relevant Indian Standards. In the absence of Indian Standards, relevant International Standards shall be followed. In the absence of both, Good Industry Practice shall be followed.

The Concessionaire shall supply the Designs and Drawings including calculations, in 2 (two) sets to the Independent Engineer for approval and 2 (two) sets to the Concessioning Authority for review. The Designs and Drawings shall be sent in batches in chronological order of execution of work to facilitate scrutiny. The Designs and drawings, which shall be in metric/ SI unit, shall be bold and clear. References shall be given in general wherever required, for all Designs and Drawings.

The Concessionaire shall supply to the Concessioning Authority 2 (two) sets of the finalised Designs and Drawings within 15 (fifteen) Days of the approval by the Independent Engineer thereof. The Concessionaire shall also supply to the Concessioning Authority 1 (one) set of the "As Built" Drawings within 30 (thirty) Days from the date of completion of IOCL Captive Jetty Project Facilities along with a soft copy.

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APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the IOCL Captive Jetty Project. The role and functions of the Independent Engineer shall include the following:

(i) review of the Designs and Drawings;

(ii) review, inspection and monitoring of Construction Works;

(iii) rendering assistance in seeking of approval from collector of customs for the purpose of operationalising the facilities and services.

(iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;

(v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(vi) assisting the Parties in resolution of disputes as regards the Designs and Drawings; and

(vii) undertaking all other duties and functions as envisaged under the Agreement.

2. Review or Designs and Drawings

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the

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Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the Monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

(v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.

(vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

(vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

(viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.

(ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates,

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the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Captive Jetty Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Captive Jetty Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

(x) If at any time during the Construction Period, the Independent Engineer deter mines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

(xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioning Authority.

(xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority and the Concessionaire of the same.

(xiii) Upon receipt of intimation from the Concessionaire on the substantial completion of the jetty, mooring system, fendering system, approach trestle and firefighting system, that the facilities are ready for declaration as a "**Landing and Shipping Place**" for IOCL cargo, the Independent Engineer shall inspect the Captive Jetty Project Facilities and on satisfying himself by the inspection, issue a "**Certificate of Substantial Completion**" to the extent required for the declaration as "**Landing and Shipping Place**", within two weeks.

(xiv) The Independent Engineer shall assist the Concessioning Authority in preparing the application to the Customs Department for the declaration of the area as a "**Landing and Shipping Place**".

(xv) Upon submission of the application to the customs Department for the

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declaration of the area as a **"Landing and Shipping Place"**, the Independent Engineer shall follow up and obtain the declaration by the Customs Department.

(xv) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

Annexure to Appendix 7

Tests

Pre-Operating Tests (Site performance tests) for systematic checking of all marine equipment such as mooring hooks, access gangway, berthing aid system etc, instrumentation and related facilities for the purpose of allowing the IOCL Captive Jetty Project Facilities to be operated, for adjustment purposes under safe conditions prior to the berthing of first Cargo carrier shall be carried out.

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APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/ CONCESSIONING AUTHORITY

The Concessionaire shall at all-time maintain valid Applicable permits that may be required for construction and operation of the terminal. The Concessionaire and Concessioning Authority would obtain approvals required to be obtained by them at their costs from the concerned Government Authority.

A. Applicable Permits and Clearances obtained / to be obtained by the Concessionaire before commencement of Construction Works.

Sl. No	Nature of Approval	Received on
1	NOC from Department of Explosives (PESO)	
2	Consent to Establish (NOC) from State Pollution Control Board, As per the Water Act 1974 and Air Act 1981.	
3	Consent to Operate (CTO) from State Pollution Control Board, As per the Water Act 1974 and Air Act 1981.	

B. Applicable Permits and Clearances obtained/to be obtained by the Concessioning Authority

Sl. No.	Nature of Approval	Received on
	Environmental Clearance from MoEF	

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APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the ---- day of ----- at ------ by --- ---------- (Name of the Bank) having its Head/Registered office at ---------- hereinafter referred to as **"the Guarantor"** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favour of

M/s KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office at 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001, hereinafter referred to as **"the Concessioning Authority"** or as **"KPL"** which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a) In terms of the Concession Agreement dated ---between the Concessioning Authority and the Concessionaire, the Concessionaire is required to furnish to the Concessioning Authority a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs._____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

b) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. IOCL ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

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3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs._____/- (Rupees _____ only) within five (5) calendar Days of receipt of a written demand there for from the Concessioning Authority stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Concessioning Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Concessioning Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Concessioning Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Concessioning Authority shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Concessioning Authority or postponement/non exercise/ delayed exercise of any of its rights by the Concessioning Authority or any indulgence shown by the Concessioning Authority to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Concessioning Authority of any of the Concessioning Authority's rights or any indulgence shown by the Concessioning Authority ; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Concessioning Authority in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs._____ /- (Rupees _____only).

6. This Guarantee shall not be affected by any change in the constitution or

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winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:

   a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;

   b. shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;

   c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

   d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

   e. shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee;

   f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized

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to execute this Guarantee pursuant to the power granted under ____.

11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of ___for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREIN ABOVE WRITTEN.

SIGNED AND DELIVERED by_____Bank by the hand of Shri _____its _____and authorized official.

APPENDIX 10

CERTIFICATES

I. COMPLETION CERTIFICATE

1. I, [•] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [•], for the [•] Project on build, operate and transfer (BOT) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [•] and Schedule-[•] of the Agreement have been successfully undertaken to deter mine compliance of the Project with the provisions of the Agreement, and I am satisfied that the IOCL Captive Jetty Project can be safely and reliably placed in commercial service of the users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the IOCL Captive Jetty Project have been completed, and the IOCL Captive Jetty Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

SIGNED, SEALED AND DELIVERED

For and on behalf of the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

II. PROVISIONAL CERTIFICATE

1. I, [[•] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [•], for the IOCL Captive Jetty Project on build, operate and transfer (BOT) basis through [• (Name of Concessionaire)], hereby certify that the Tests specified in Article [•] and Schedule-[•] of the Agreement have been undertaken to determine compliance of the IOCL Captive Jetty Project with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioning Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the IOCL Captive Jetty Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the IOCL Captive Jetty Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the IOCL Captive Jetty Project is hereby provisionally declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:

(Name and Designation) (Address)

(Signature)

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SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:

(Signature) (Name and Designation) (Address)	

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APPENDIX 11

PERFORMANCE STANDARDS

The Concessionaire shall execute the IOCL Captive Jetty Project and all of its obligations with due care and diligence in a professional manner complying with the relevant construction standards, operation and maintenance standards and safety standards, and in accordance with Good Industry Practice such that besides complying with every requirement and obligation set forth in the Project Contracts and Applicable Laws, the Concessionaire shall also ensure that the IOCL Captive Jetty Project is fit for the intended Project Requirements as described in the Project Contracts.

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APPENDIX 12

LIST OF MOVABLE ASSETS FOR IOCL CAPTIVE JETTY

Sl No.	Description
I	Lighting on Jetty
Ii	Buoys near jetty and channel
Iii	Mooring Hooks
Iv	Fenders with frame
V	Gangway
Vi	Fire & Gas Detection System
Vii	Berth Aid System
Viii	Mooring Load Monitoring System & Quick Release System
Ix	Environment Monitoring System
X	Lighting System
Xi	Closed Circuit Camera
Xii	P.A. System
Xiii	Unloading Arms
Xiv	Process Piping
Xv	Fire Fighting System

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APPENDIX 13

MINIMUM GUARANTEED CARGO

Minimum Guaranteed Cargo throughput pertaining to relevant articles and Appendix shall be as follows:

Year of Concession	LPG	POL/LOBS
1st year	0%	0%
2nd year	0%	0%
3rd year	0%	0%
4th year	10% of 1 MMT	0%
5th year	20% of 1 MMT	0%
6th year	25% of 3 MMT (combined)	
7th year	30% of 3 MMT (combined)	
8th year onwards	50% of 3 MMT (combined)	

Note:

Year means the period of twelve months commencing from the date of award of Concession i.e., 180 days from the date of signing of Concession Agreement or provision of EC whichever is later and every twelve months period thereafter, during the term of this agreement.

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APPENDIX 14

LAND LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made on the _____day of_____ (hereinafter called "the Lease Agreement")

BETWEEN

KAMARAJAR PORT LIMITED, a company incorporated and existing under the Laws of India with its registered office 4th Floor, Erstwhile DLB Building, Rajaji Salai, Chennai - 600 001 represented by its ..... of.....aged.....years residing at (hereinafter called "the Lessor") on the one part

AND

M/s Indian Oil Corporation Limited, a company registered under the Companies Act, 1956, and having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai – 400 051 (hereinafter called "the Lessee") of the other part,

WHEREAS,

By the Concession Agreement dated ---------- entered into between the Lessor as Concessioning Authority and the Lessee as the Concessionaire (hereinafter referred to as "the Concession Agreement") the Lessor has granted to the Lessee, the concession to implement the IOCL Captive Jetty Project in terms of the provisions set out thereunder.

AND WHEREAS to facilitate the IOCL Captive Jetty Project, the Lessee has to put up the terminal facilities for IOCL Captive Jetty in the land measuring approx 5 acres at Kamarajar Port and the Lessor would hand over the possession of the land to the Lessee. The Lessee would pay **Rs. 3,86,70,000/- (Rupees Three Crores Eighty Six Lakhs and Seventy thousand only)** plus applicable service tax towards one time lease rent for the 30 years lease period effective from date of award of concession. (This is indicative and to be calculated as per the prevailing scale of rates. It has to be re worked based on the date of demand and actual land area given on lease by KPL). **The actual amount payable would be dependent on the Scale of Rates prevailing on the date of demand by KPL and also the actual area handed over on lease.**

NOW THIS DEED WITNESSETH AS FOLLOWS:-

That the Lessor does in consideration of the above payment and other terms and conditions on the part of the Lessee to be observed, hereby grants to the Lessee, a lease (hereinafter called "the Lease") of ALL THAT piece of land containing approx 5 acres or

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thereabouts, situated at Kamarajar Port, which piece of land is more particularly described in the schedule hereunder written and for greater clarity delineated with the boundaries thereof on the plan annexed hereto (hereinafter called "the Leased Premises") TO HOLD the same, for the IOCL Captive terminal, upto the date of expiry of 30 (thirty) years commencing from the Date of Award of Concession under the Concession Agreement for the IOCL Captive jetty Project executed between the Lessee (Concessionaire) and Lessor (Concessioning Authority) [hereinafter called "the Term" or "Lease Period"], subject to the following conditions: -

Definitions and Interpretation

"**Concession Agreement**" means the Concession Agreement dated ---------for Setting Up of IOCL Captive jetty Project in the Kamarajar Port executed between Kamarajar Port Limited and M/s. Indian Oil Corporation Limited.

"**Date of Award of Concession**" means the date defined in the Concession Agreement.

"**Dy. Conservator**" means General Manager (MS) / Deputy Conservator of Kamarajar Port Limited.

"**Expert(s)**" means an Engineer, Surveyor or other qualified person appointed by the Lessee and approved by the Lessor for the purposes specified in Article 2(c), 2 (f) and 5.

"**Financial Assistance**" means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the IOCL Captive jetty Project and IOCL Captive terminal.

"**Financing Documents**" means, collectively, all the loan agreements, notes indentures, letters of credit, guarantee documents, debenture instruments, share subscription agreements, subordinated debt agreements and other documents, as the same may be amended, supplemented or modified from time to time, executed in favour of or entered into with the Lenders, by the Concessionaire / Lessee in respect of the Financial Assistance and includes any document providing security for the Financial Assistance.

"**IOCL**" means Indian Oil Corporation Limited.

"**Leased Premises**" means all that piece and parcel of land having an extent of approx 5 acres at Kamarajar Port handed over to the Lessee on **Date of Award of Concession** by the Lessor in respect of the IOCL Captive terminal facilities as per the plan annexed to this Lease Agreement.

"**Lenders**" means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures / or other debt instruments issued by the Concessionaire / Lessee to finance

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the IOCL Captive jetty Project and IOCL Captive terminal.

"Lessee" means the **Indian Oil Corporation Limited.**

"Lessor" means the **Kamarajar Port Limited.**

"IOCL Captive Jetty Project" means the design, finance, construction, operation, maintenance and marketing and providing of the Project Facilities & Project facilities and Services in accordance with the provisions of the Concession Agreement.

"IOCL Terminal" means IOCL terminal facilities including storage tanks, onshore facilities, booster pumping facilities etc. required for import / export and other related activities within the Leased Premises.

"Port Regulations" means all rules and regulations framed under the Major Port Trust Act, 1963 or any other law in force and such other directions or regulations under any statute notified by the Lessor from time to time.

"Scale of Rates" means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by KPL as applicable.

"Selectee" means a Person proposed by the Lender / Lender's Representative pursuant to the Substitution Agreement and approved by the Lessor for substituting the Lessee for the Residual Concession Period and Residual Lease Period, in accordance with the provisions of the Concession Agreement and the Land Lease Agreement.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3 of the Concession Agreement.

"Term / Lease Period "means the period of lease for which the lease is granted by the Lessor to the Lessee.

Article-1.

(a) The Lessee would pay to the lessor **Rs. 3,86,70,000/- (Rupees Three Crores Eighty Six Lakhs and Seventy thousand only) plus applicable service tax,** towards single upfront Lease rent for 30 years for the leased premises. **The actual amount payable would be dependent on the Scale of Rates prevailing on the date of demand by KPL and also the actual area handed over on lease.**

(b) No further lease rent shall be payable by the Concessionaire to the Concessioning Authority during the 30 years period of this lease Agreement.

(c) The Lessee shall, from time to time and at all times during the said Term, pay and

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discharge all rates, taxes, charges, and assessments of every description now subsisting, or which may at any time hereafter during the said Term be imposed, charged or assessed upon the said premises hereby demised or the buildings to be erected thereon, whether it be payable by the Lessor or the Lessee.

(d) If the Lessee makes default in payment of sub-lease levy, charges for the utilities/ services/ facilities provided by the Lessor on chargeable basis, cargo and vessels related charges or any other dues to the Lessor and/or interest as provided hereinbefore, the Lessor shall be entitled to revoke this agreement and cancel the Lease forthwith. The Lessee shall thereupon forfeit all its rights thereunder and shall remain liable for any sum then due by the Lessee and also for any loss, which may be caused to the Lessor by reasons of such default. However, no party will invoke termination clause as a matter of right but as a last resort after exhausting all provisions of Dispute Resolution Mechanism provided under Concession Agreement.

(e) The Lessee further agrees that the promoting company of the Lessee namely, M/s. Indian Oil Corporation Limited (IOCL), shall within 6 (six) Months from the Date of Award of Concession for the IOCL Captive Jetty Project, provide an undertaking to the Lessor stating that its shareholding in the Lessee Company shall not be below 26% of its Paid up/Subscribed share capital throughout the Lease Period of 30 (thirty) years and any dilution in the said share holding shall only be with the prior approval of the Lessor which consent shall not be unreasonably withheld. Any such dilution shall be only to a Public Sector Undertaking of Central/State Government of India.

Article-2.

(a) All plans for the development of leased property and construction of building(s)/ structure(s) /facility (ies) shall be got approved by the Concessioning Authority or its authorized representative of the Lessor, before the commencement of work. The plans shall also be got approved by the by the concerned statutory authority as required before the commencement of the work.

(b) The Lessee shall obtain all statutory and mandatory clearances as may be required under law including environmental clearances from appropriate authorities, before execution/commissioning of the IOCL Captive Terminal and from time to time thereafter.

(c) Foundation and the structural design of the tank(s) and other structures shall be certified by Expert(s)/ PMC of the Lessee and such certificates shall be produced to the Lessor prior to proceeding with construction.

(d) Risk Analysis shall be conducted and Disaster Management Plan shall be submitted and got approved by Lessor before proceeding with the construction. A

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copy of the Environment Impact Assessment (EIA) study conducted shall be submitted to the Lessor before commencement of construction.

(e) After setting out and on reaching different stages, the Concessioning authority or his authorized representative shall be intimated, so as to enable them to verify whether the same is conforming to the lease conditions. The work shall be proceeded with, only after getting the clearance at each stage from Concessioning authority or his authorized representative.

(f) Construction of the tank(s) including its foundation shall be done under the supervision of Expert(s) as approved by the Lessor, and on completion of the work but prior to commissioning, a certificate from such agency regarding the structural soundness of the tank(s) shall be produced to the Lessor for issuing the occupation certificate.

(g) The Lessee shall use the said land for construction of building(s)/structure(s)/facility(ies) for the purpose of constructing, developing, operating and maintaining the IOCL Captive Terminal Facilities, unless otherwise approved by the Lessor. The Lessee shall not make any unnecessary excavation or remove or appropriate any minerals, mineral substances of any description, sand or clay, from the said land. Any such materials obtained from the site should be placed or disposed off as directed by the Chief Engineer / General Manager (CS & BD) of the Lessor or his authorised representative.

(h) Building(s)/structure(s)/facility(ies) erected on the Leased Premises shall not be occupied until a formal occupation certificate is issued by the Lessor.

(i) If the Lessee has completed the construction of the building(s)/structure(s)/ facility(ies) as provided herein within the stipulated period:

i) The Lessee shall have the liberty to use the said land for purposes connected with its trade or business.

ii) It is made clear that the Lessee should utilise the maximum permissible area of the land leased for the construction of IOCL Captive Terminal Facilities and the Lessor reserves the right to repossess without any claim to compensation whatsoever, the whole or part of the portion left unutilised and use the same in any manner deemed expedient by the Lessor. In case there is any dispute regarding the extent of land that should be utilised for the construction or the extent to be repossessed, the decision of the Board of the Lessor shall be final and binding.

(j) The Lessee shall not at any time without the previous consent in writing of the

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Lessor erect or suffer to be erected on the said land any building(s)/structure(s)/ facility(ies) other than and except the building(s)/structure(s)/ facility(ies) as approved by the Chief Engineer Engineer / General Manager (CS & BD) of the Lessor nor permit the same to be used for any purpose other than that specified above. In case Lessee fails to do so, the Lease shall be liable for termination.

(k) If the Lessee does not comply with such terms and conditions in this Lease Agreement, the Lessor shall be at liberty to terminate the Lease and thereupon the Lessee shall remove the building(s)/structure(s)/ facility(ies) erected or other improvements made by it without any claim to compensation whatever and restore the premises to its original condition, within such time as directed by the Lessor. If the Lessee does not remove the building(s)/structure(s)/ facility(ies) or restore the premises to its original condition as required and within the time prescribed, the Lessor shall have the right to remove the said building(s)/structure(s)/ facility(ies) and restore the said premises to its original condition and the cost of such removal and restoration shall be realised from the sale of materials and the balance, if any, from the Lessee. In case there is any amount left from the sale price of the materials so removed, after realisation of the cost of removal and restoration referred to herein, the same may be utilised by the Lessor for recovery of any other amounts that may be due to the Lessor from the Lessee.

(l) Should the Lessee fail to complete construction of building(s)/structure(s)/ facility(ies) and commence the commercial operations of IOCL Captive Terminal Facilities on or before the date of expiry of 36 Months and 60 Months from the Date of Award of Concession for LPG and POL / LOBS handling facilities respectively, the Lessor reserves the right to repossess the land. However, in exceptional cases where the Lessor is satisfied that the delay is for reasons beyond the control of the Lessee, the Lessor may grant extension of the construction period subject to payment of additional lease rent calculated at 50% of the normal lease rent for the extended period.

(m) The Lessee shall observe and perform all Port Regulations/directions and follow all safety norms as may be prescribed by the competent/statutory authorities from time to time which are deemed to be a part of the Lease Agreement and shall be binding on the Lessee.

(n) The Lease shall be governed by provisions of the Major Port Trusts Act, 1963, Indian Ports Act, 1908 and all directives issued by the Government of India from time to time. It shall be binding upon the Lessee to comply with all such directives issued by the Government of India and communicated by the Lessor.

(o) The Lessee shall, at all times during the subsistence of the Lease, maintain the

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premises in good sanitary condition and repair and keep the building(s)/structure(s)/ facility(ies) erected on the said land in good and tenantable condition.

(p) The Lessee will pay for any damage done by it or its Employees/Workers or agents during the aforesaid period to any property of the Lessor on the said land or land adjacent thereto.

(q) The Lessor shall not be responsible to the Lessee or any other person(s) for any loss or damage or injury to life or property arising directly or indirectly from the use of the Leased Premises and the activities the Lessee is engaged in on the said land during the period of Lease. The Lessee shall also indemnify the Lessor against all loss or damage or injury to life or property of any one including third party or claims and costs thereof arising directly or indirectly from the use of the Leased Premises and the activities the Lessee is engaged in the said land during the period of Lease.

(r) The Lessee shall provide to the representative(s) of the Lessor, at reasonable times and upon prior intimation, access to the Leased Premises, to ascertain compliance of the Lessee with the requirements of this Lease Agreement. Provided that, the representative(s) of the Lessor shall adhere to all safety and security regulations of the Lessee in respect of site access.

Article-3.

(a) The Lessee shall not assign, transfer or sub-lease the demised land or the building(s)/structure(s)/ facility(ies) erected or to be erected thereon or any part thereof without the consent in writing of the Lessor. Upon assignment, transfer or sub-lease of the land demised or any part thereof or of the building(s)/structure(s)/ facility(ies) to be erected thereon or any part thereof with the consent of the Lessor in writing and at any rate within one month of the date of such assignment, transfer or sub-lease, the Lessee shall deliver a notice of such assignment, transfer or sub-lease to the Lessor setting forth the names and descriptions of the parties thereto and particulars and effect thereof.

(b) The Lessee shall be liable to pay such charges, fees or levy as are prescribed from time to time on account of such assignment, transfer or sub-lease as the case may be. In the event of the Lessee effecting any such sub-lease, without the prior consent in writing of the Lessor for the same, it shall be open to the Lessor to approve of the same if a request therefor is made, provided, the Lessee pays the Lessor during the subsistence of such unauthorised assignment, transfer or sub-lease, additional amount as detailed below:

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(i) Where consent has already been granted by the Lessor for the sub-lease as above, and the delay is only in respect of the submission of the application for renewal of the same, the amount payable in the case of delay not exceeding two months, shall be equivalent to interest at 20% of the levy payable in respect of the sub-lease levy for the period of such delay and where it exceeds 2 months, at 40% of sub-lease levy for the total period of such delay.

(ii) In the case of unauthorised sub-lease, the Lessee shall be liable to pay a penalty at the rate of three times the sub-lease levy.

Provided however that, the Lessor, if it is satisfied at its absolute discretion that such delay in filing the application for consent or renewal of consent for such sub-lease was for circumstances beyond the control of the Lessee, the Lessor may grant remission of a portion of the amount payable as above.

(c) It is also made clear that the above provision shall not be construed as a waiver of any of the rights of the Lessor under the Lease Agreement including the right to terminate the Lease for unauthorised sub-letting, which the Lessor is entitled to enforce against the Lessee.

(d) Any assignment, transfer or subletting without the prior approval of the authority which sanctioned the Lease shall make Lease liable for cancellation.

(e) Notwithstanding anything contained in this Lease Agreement, the Lessee shall be entitled: (a) to create a charge on its rights, title and interest in the assets created by the Lessee in the Leased Premises; and (b) to assign its right, interest and benefits under this Lease Agreement, as security in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents.

(i) Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Lease Period.

(ii) Provided further, that such charge shall not be for the Leased Premises nor encumber the Leased Premises.

(iii) In the event of occurrence of default by the Lessee under the Financing Documents, the Lenders shall be entitled to exercise their rights to substitute the Lessee by a new operator ("Selectee") in accordance with the provisions of the Substitution Agreement.

(iv) Provided further, in the event of termination of this Lease Agreement,

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the said charge shall stand extinguished upon payment of compensation by the Lessor to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Lease Agreement.

Article-4.

(a) The Lessee shall be entitled to surrender the whole or a part of the land already leased before the expiration of the said Term of 30 years; provided, the Lessee shall give six Months notice or pay six Months rent in lieu thereof. In cases where the whole or a part of land is surrendered at the instance of the Lessor, the Lessee shall not be liable to give notice or rent in lieu thereof as above. Rent will, however, be payable for the period upto the date of surrender of the land.

(b) The Lessee shall utilise the maximum permissible area of the Leased Premises for the construction of the structures and the Lessor reserves the right to re-possess without any liability for payment of compensation, the whole or part of the portion of the land left unutilised and use the same in any manner deemed expedient by the Lessor.

Article- 5.

The lease is not automatically renewable, except for mutual agreement between the two parties on agreed terms and conditions within the land policy guidelines that would be prevailing at that point of time.

Article-6.

(a) At the time of termination of the Lease on the expiry of the Term thereof, or an earlier termination thereof, as provided herein, if the Lessor requires any of the building(s)/structure(s)/ facility(ies) erected on the land for its own use or otherwise, the Lessor shall be entitled to take over the same by paying compensation in respect of the same to the Lessee on the basis of the following formula:

FORMULA PRESCRIBED FOR PAYMENT OF COMPENSATION

$$C_p = R_c [0.10 + 0.90 (L-A)/L]$$

Where,

C_p = Compensation payment

R_c = Replacement Cost of equivalent new building(s)/ structure(s)/ facility(ies) as on the date of termination

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as determined by an independent Expert

L = Assessed life

A = Age as on the date of termination.

(b) In case of earlier termination of the lease due to any reason including surrender of lease by the Lessee, the Lessor shall refund to the Lessee the proportionate lease rent within Two (2) months of the termination of the lease.

Article-7.

(a) AND THE Lessor hereby agrees that the Lessee observing all the aforesaid conditions, shall peaceably hold and enjoy the said land during the said Term without any interruption by the Lessor, provided that, upon any breach or non-observance by the Lessee or by a person claiming through or under the Lessee of any of the aforesaid covenants or conditions the Lessor may, notwithstanding the waiver of any previous cause or right of re-entry, enter upon the said premises and re-possess it, as if this Lease had not been granted and thereupon this demise shall absolutely determine and the Lessee shall be entitled within three calendar months from the date of such re- entry to remove all building(s)/structure(s)/ facility(ies) which at any time during the currency of this Lease shall have been erected or affixed by the Lessee upon the said land without any claim to any compensation whatsoever.

(b) And the Lessor doth hereby further agree that before the expiration of the Lease period years the Lessee shall be entitled to remove all or any building(s)/structure(s)/ facility(ies) which at any time during the currency of this Lease shall have been erected or fixed by the Lessee upon the said land without any claim to any compensation whatever, and surrender the Leased Premises to the Lessor on giving six months' notice of the same or six month's rent at the then prevailing rate, in lieu thereof.

(c) It is distinctly agreed that the Lessee shall not claim or be entitled to any compensation whatever except as regards building(s)/structure(s)/ facility(ies)not removed by the Lessee from the said land in compliance with a request in writing by the Lessor.

(d) It is also distinctly agreed that the Lessee shall deliver up the demised premises at the expiration or sooner determination of tenancy restored to its former condition unless otherwise agreed/ requested by the Lessor.

(e) The Lessor shall be entitled to allow any public utility services such as electric posts, or cables, water supply, sewer lines, drains, sanitary lines or telegraph post

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or cables, to be taken through the said land and the Lessee shall not be entitled to any compensation in respect of the same, including compensation, if any, relating to the space occupied by such public utility services. Provided that, while allowing such public utility services to be taken through the said land, only the minimum possible hindrance shall be caused to other structures in the said land.

(f) It is further agreed that if the Lessee does not remove the building(s)/structure(s)/ facility(ies) as allowed above or restore the demised premises to its original condition as required by above within the time prescribed in the said articles, the Lessor shall have the right to remove the said building(s)/structure(s)/ facility(ies) and restore the demised premises to its original condition and the cost of such removal and restoration shall be realised by the Lessor by the sale of materials recovered and the balance, if any, from the Lessee. In case there is any amount left from the sale price of the materials so removed, after realisation of the cost of removal and restoration preferred to herein, the same may be utilised by the Lessor for recovery of any other amounts that may due to the Lessor from the Lessee.

(g) It is also agreed that the terms "the Lessor" and "the Lessee" herein used shall, unless inconsistent with the context will include in the case of the former, its successors in office and assigns and in the case of the latter permitted assigns.

Article-8.

(a) Notwithstanding anything contained hereinbefore, it is expressly agreed and understood that the Lessor shall be entitled to terminate the Lease at the risk and cost of the Lessee in the event of violation if any, of the provisions hereof by the Lessee (Lessee Default) which is not rectified within a period of 90 (ninety) days of a notice in this behalf by the Lessor. Provided further that the Lessor shall also provide a notice to the Lenders to cure the Lessee Default or select a Selectee (as defined in the Substitution Agreement) to substitute the Lessee in accordance with the Substitution Agreement. In the event, the default is not cured or the Selectee is not selected by the Lenders within 180 days of receipt of the notice, then the Lessor has a right to terminate the Lease Agreement.

Article-9.

(a) The Lessee hereby irrevocably authorises the Lessor to pay to the Lenders or at their instruction to any designated bank account in India, the compensation payable to the Lessee. The Lessee confirms that upon such payment being made, the Lessor shall stand duly discharged of its obligations regarding payment of compensation under this Lease Agreement and the charge created by the Lessee

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in favour of the Lenders on any of its assets taken over by the Lessor shall stand satisfied and all such assets shall, on and from the date of termination of the Lease, be free from such charge. The Lessee further confirms that payment of compensation by Lessor in accordance with this Article 9 shall be a valid discharge to the Lessor in respect of Lessor's obligation regarding payment of compensation to the Lessee under this Lease Agreement.

(b) Provided, notwithstanding anything inconsistent contained in this Lease Agreement, the Lessee/the Lenders as the case may be, shall be entitled to remove at its/ their cost all such movables which are not taken over by the Lessor and to deal with the same in accordance with their respective rights under law.

(c) Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Lenders is furnished by the Lessee to the Lessor, the compensation shall be paid by the Lessor to the Lessee directly.

Article-10.

(a) The Schedule above referred to:

Registration District	: North Chennai Registration District
Registration Sub District	:Tiruvottiyur Registration Sub District (Puzhuthivakkam), Ponneri Registration Sub District (Kattupalli)
Taluk	: Ponneri
Firka	: Kattur
Village	: Kattupalli & Puzhuthivakkam
Desom	: India
Survey No.	:_____
Sub Division No.	:
Area (in cents/acres/hectares)	: 5 acres
Limit	:
Tenure	: Lease

(b) DESCRIPTION OF BOUNDARIES

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All the piece and parcel of land situated at _____

South : _____

West : _____

North : _____

East : _____

The plan above referred to is appended (Annexure).

Article-11.

Capitalised terms used in this Lease Agreement but not defined shall have the meaning as assigned to them respectively in the Concession Agreement executed between the Lessor and the Lessee on __.

In witness whereof the common seal of the Kamarajar Port Limited has been affixed and the Secretary Mr. _____ of the Kamarajar Port Limited, for and on behalf of the Board of Kamarajar Port Limited has signed and the Lessee have by their duly constituted attorney ..... executed those presents on the day and year first above written.

The common seal of the Kamarajar Port Limited has been affixed and the Company Secretary of the Kamarajar Port Limited for and on behalf of the Board of the Kamarajar Port Limited has signed in the presence of:

Witness(1)

Witness (2)

The duly constituted attorney of the Lessee, in the presence of:

- Common Seal of the Lessee

Witness(1)

Witness (2)

The document is Computer printed :

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Correction and interlineations: Nil

IN WITNESS WHERE OF THE LESSOR and the LESSEE have set their hands to this agreement on the day and year first above written.

LESSEE **LESSOR**





ANNEXURE

SCALE OF RATES

1. DEFINITIONS

Company shall mean Kamarajar Port Limited registered under the Companies Act, 1956. Day shall be reckoned from 6.00 a.m. to 6.00 a.m.

Coasting vessel means a vessel which is engaged in the carriage by sea of passengers or goods from any port or place in India to any other port or place in India. The status of the vessel as borne out by its certification by the Customs or the Director General of Shipping shall be the deciding factor for its certification as coastal or foreign going for the purpose of levy of vessel related charges.

Foreign vessel means any vessel other than coastal vessel.

Gross Tonnage (GT) is the cubic capacity of the whole ship including engine room and crew space but excludes space above deck, cabins, deck shelters, chart houses etc and as recorded in the Certificate of Registry of the vessel.

Pure Car Carriers-Vessels intended to load/discharge any wheeled cargo such as cars, automobiles, trucks, semi-trailer trucks, trailers or railroad cars, crusher units etc., that are driven on and off the ship through ramps.

Automobiles-Any units which can move on wheels/chain including Murphy.

Cold move means without the power of the engine of the vessel

Entry means entering into the Port limits

Shifting means movement of vessel from one berth to another or from berth to anchorage or any other movement within the port limit. Arrival in to the port and departure from the port shall not be considered as movement for this purpose.

Warping means movement of the vessel in the same berth or to another berth by means of mooring ropes only.

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2. CONDITIONS

a) All charges notified hereunder in various Chapters in terms of U.S. Dollars shall be levied for all Foreign Vessels and Indian Vessels engaged in Foreign Trade. The charges shall be collected from the Owners /Agents in Indian Rupee converting U.S Dollars Rates at market TT buying Rates notified by the State Bank of India / Andhra Bank as on date of arrival of the vessel.

b) A regular review of the exchange rate shall be made once in thirty days from the date of arrival of the vessels in case of vessels staying in the port for more than thirty days. In such cases the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

c) The fraction of a Rupee so arrived at will be rounded off to the next full Rupee.

d) Vessel related charges for coastal vessels shall be recovered at the rates notified in Rupees only.

e) The charges for services and for the use of the crafts and appliances not mentioned in the Scale of Rates are arranged between the Company and the person requiring such services.

f) A Company may, in special cases and for reasons to be recorded in writing exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force or remit the whole or any portion of such rate or charge so levied.

g) Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Company, or to be shipped for export, or to be transshipped, shall be payable before the goods, are so removed or shipped or transshipped.

h) For the purpose of Scale of Rates

1. One unit by weight means 1 tonne (1000 kilograms)
2. One unit by volume measurement means 1 cubic metre; and
3. One unit by capacity measurement for liquids in bulk means 1000 litres

i) In calculating the Gross weight or measurement by volume or capacity of any individual item, fraction upto and including 0.5 shall be taken as 0.5 and fractions over 0.5 shall be taken as one unit.

j) It shall be the primary responsibility of the party filling the Import/Export Application to declare the correct unit and/or units on the application at the time of filing. In case the required units or units not being available in the relative shipping

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documents, the party shall actually weigh and/or measure the consignment and then declare the same on the Application before filing with the Company. Any under declaration and/or under statement found at the time of test check by the Company will involve the party liable for the penalty.

3. VESSEL RELATED CHARGES

1. Vessel related charges will be charged on the basis of the Gross Tonnage (GT) of the vessels.
2. For a vessel carrying deck cargo, the deck cargo will be added to the Gross Tonnage of the vessel for determining the Gross Tonnage on which the charges are to be calculated.
3. For a vessel having dual tonnage, the higher tonnage will be taken into account for calculation of all vessel related charges.
4. A foreign going vessel of Indian Flag having a General Trading License can convert to coastal run on the basis of a customs Conversion orders.
5. A foreign going vessel of foreign flag can convert to coastal run on the basis of a Coastal Voyage License issued by the Director General of Shipping.
6. In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
7. In cases of such conversion, coastal rates shall be chargeable only till the vessel completes discharging operations; immediately thereafter foreign going rates shall be chargeable by the discharge ports.
8. For dedicated Indian Coastal Vessels having a Coastal License from the Director General of Shipping, no other documents will be required, to be entitled to coastal rates

A. PORT DUES

Particulars (Vessels Chargeable)	Rates per GT
Coastal Vessels	Rs. 12.37
Foreign Vessels	USD 0.424

Note:

1. Port Dues shall not be levied on:

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i. Vessels belonging to other Indian Ports or vessels belonging to Government of India
ii. any pleasure Yachts;
iii. any vessel which, having left this Port is compelled to re-enter it by stress of weather or in consequence of having sustained any damage

2. For foreign going vessels the Port Dues are payable on each entry into the port

3. For coastal vessels, the due is payable once in thirty days provided that the payment of the due once made shall be valid only for three entries into the port (including the entry on which the payment was made) during the said period of thirty days. In calculating the expiration of the period of exemption in respect of Coasting vessels, the day of payment should be reckoned as one of the 30 days, and the day of entry should be reckoned as the day, whether the dues are actually paid on the day of entry or subsequently, and the date on which the liability to dues is based is that date on which the vessel passes the geographical limits of the Port.

4. For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the Remarks column of its International Tonnage certificate will be taken to be its gross tonnage for the purpose of levying Port Dues.

5. Vessels entering the port and taking in only provisions, water, bunker coal or liquid fuel for their own consumption shall be charged Port Dues at half rates.

6. A vessel entering port in ballast and not carrying passengers but leaving the Port laden shall be charged with only 75 % of the Port Dues with which she would otherwise be chargeable.

7. A vessel entering port but not discharging or taking in any cargo or passenger therein shall be charged with only 50 % of the Port Dues with which she would otherwise be chargeable.
8. A vessel landing a passenger at port without anchoring and proceeding on her voyage is not liable to Port Dues.

B. PILOTAGE-CUM-TOWAGE FEES

The fees leviable for piloting vessels in and out of the harbour includes services of the Ports Pilot, required number of tugs and launches and mooring crew. The rate specified below is inclusive of one inward and one outward movement and shifting of vessels for Port convenience

Coastal Vessels (per GT) (in Rupees)	Foreign vessels (per GT) (in USD)
19.04 Minimum charges payable 35,200/-	0.656 Minimum charges payable 1200

Note:

(a) For inward / outward / shifting/ warping, the charges are as following

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Sl. No.	Services	Operations	
		Hot Move	Cold Move
1	Inward Pilotage	50%	100%
2	Outward Pilotage	50%	100%
3	Shifting Pilotage	50%	100%
4	Warping	Rs.12,080/- for Costal vessels USD 412 for Foreign vessels	

The above percentage of charges shall be applied on the rates shown under Pilotage and towage fees.

(b) For this purpose, turning round of a vessel within the berth is also considered as a shifting.

(c) Pilotage will not be compulsory in case of vessels upto 200 GT. Such vessels may, however, ask for Pilot if they so desire on payment of fees as specified in the Schedule of Pilotage fees.

Pilot detention Charges

If the vessel is not able to move/cast off from the berth within 30 minutes of Pilot boarding due to any fault on the part of the vessel, the vessel is liable to pay an additional charge at the rate of 143 USD (Rs. 4,192/- for coastal vessels) per hour or part thereof, beyond thirty minutes till the vessel moves / vacates

Pilot cancellation charges

If the movement of the vessel is cancelled after Pilot boarding due to any fault on the part of the vessel, a cancellation charge of USD 286 (Rs. 8,384/- for coastal vessels) will be levied.

In case a vessel is not ready for sailing as scheduled as per the unberthing request, she must inform the Port Signal Station over VHF at least 2 hours before the schedule time for cancellation of pilot. A vessel not able to cancel pilot booking at least 2 hours before the schedule time shall be liable to pay 143 USD, for coastal vessels Rs. 4,192/-

C. BERTH HIRE CHARGES

Coal berths (CB1 and CB2), General Cargo Berth and Finger Jetties

Rate per Gross Tonnage per hour or part thereof	
Coastal Vessel (in Rs.)	**Foreign vessel (in USD)**
0.22 (minimum Rs. 296/- per Hour)	0.010 (minimum USD 10.8 per Hr)

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The vessel should be ready for sailing in all respects within 2 hours of completion of her cargo work. The information regarding the time of her readiness to sail shall be communicated to the Port Signal Station over VHF by the vessel and hoisting of 'G' flag at least 1 hour in advance. A vessel which is not ready to sail after 2 hours of completion of cargo work is liable to pay additional berth hire charges at the rate of 100% of the normal berth hire charges per hour or part thereof. The duration for which additional berth hire is to be charged will be calculated from the time of expiry of 2 hours from completion of cargo work to the time the vessel is ready for sailing.

For a vessel which is ready to sail in all respect but could not sail due to port operational requirements, berth hire charges will cease after 2 hours of vessel's readiness to sail.

D. <u>Vessel Related Charges applicable for Pure Car Carriers only calling at General Cargo Berth:</u>

Sl.No	Vessel Related Charges for Pure Car Carriers vessels	Unit	Tariff (Rates in USD)
1	Port Dues	GT	0.34
2.	Pilotage	GT	0.525
3.	Berth Hire Charges	GT per hour	0.008

The base rate of vessel Related Charges will be revised on revision of Scale of Rates by KPL or any other authority as the case may be from time to time.

<u>Note:</u> Any vessel which continues to occupy berth after the expiry of the time indicated in the notice served on the vessel to vacate the berth (notice of which had been given at least 12 hours in advance) shall pay additional berth hire charges at the following rates. The time to be calculated from the expiry of the notice period till the vessel vacates the berth

1. For the first two days - At four times the rate of the berth hire charges for authorized occupation
2. For third day and for subsequent days - At six times the rate of berth hire charges for authorized occupation
3. The additional berth hire charges shall be in addition to normal berth hire charges payable under the schedule

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4. Vessels double banked with another vessel occupying a berth, will be charged two-third (2/3) of the berth hire charges specified above

5. Rate at anchorage at port basin or mooring berth or the vessel at mooring inside the basin will be half the rate as per above Schedule

4. CARGO RELATED CHARGES

WHARFAGE

S. No.	Nomenclature	Unit	Rate
1	Coal & Coke	1 Tonne	Rs.130.00
2.	Cars and other automobiles	Ad valorem	0.40%
3.	Machinery Items	Ad valorem	Foreign - 0.22% Coastal – 0.13%
4.	Timber Logs	Cubic Meter	Foreign - 25.30 % Coastal – 15.18%
5.	Other Goods	1 Tonne	Rs.60.00
6.	Other Goods	Ad valorem	0.5%

Note:

Ad valorem Levy:- The percentage rate of 'Ad valorem' unit shall be as follows:

(a) **Goods imported**:- The percentage levy shall be on C.I.F value as assessed by Customs for Import goods.

(b) **Goods exported**:- The percentage levy shall be on F.O.B value as assessed by Customs for Export goods.

(c) **Coastal goods:-** The value to be taken for Ad valorem levy shall be given in the Coastal Bill of Lading/Invoice.

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Demurrage Charges:To levy the demurrage charges for automobile units as set out below :

Days	Charges per vehicle per day or part of the day	Remarks
Upto 15 Days	Free	The date of automobile entry into port and the date of export of automobile units will not be counted for levying of demurring Charges.
16 to 20 days	Rs.24/-	
21 to 25 days	Rs.48/-	
26 to 30 days	Rs.72/-	
Beyond 30 days	Rs.96/-	

Wharfage for handling transshipment of automobile units & cargo and demurrage charges:

S.No.	Transshipment Tariff	Rs. Per Car/per Movement
1.	Cars up to 1400 CC	Rs.1,100/-
2.	Cars above 1400 cc	Rs.1,500/-
3.	Van/ SUV	Rs.3,000/-
4.	Bus/ Truck and Heavy vehicles	Rs.4,500/-

Transshipment Demurrage Charges:-

Further, free time of 20 days is allowed for storing the transshipment cargo. This excludes the customs notified holidays and Port non-working days. Beyond the period, the demurrage charges shall be recovered.

Transshipment Demurrage Charges (Automobile Units)

Days	Charge per vehicle per day Or part of the day
Upto 20	Nil
21 - 25	Rs.24/-
26 - 30	Rs.48/-
Beyond 30	Rs.96/-

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Demurrage charges for the timber logs:

Days	Charges payable per Wharfage unit (per cubic meter)per day or part thereof
Upto 7 days	Free
8 to 15 days	Rs.13/-
16 to 25 days	Rs.26/-
26 to 56 days	Rs.39/-
Thereafter	Rs.65/-

Terms and conditions for Wharfage

In respect of Bulk cargoes the dues shall be recovered on the manifested tonnage.

If any question arises as to the classification of any goods, it shall be referred to the Board of Directors for decision and the Board shall decide the question, which shall be final.

On packages containing articles of miscellaneous character, charges shall be levied at the rate applicable to the articles on which the highest rate is chargeable.

In case of goods not otherwise specified where the value of the cargo is not available or could not be assessed the wharfage levy will be on weight-tonne basis at the above- mentioned rate

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5. HIRE CHARGES FOR PORT CRAFTS

For hiring the Port crafts, the following charges will be applicable -

Craft	Rate per hour	
Tug	18,120/-	394
Pilot Launch	4,320/-	94
Mooring Launch	1,920/-	42

Note:

(i) The hire charges will be for a minimum period of 30 minutes

(ii) Above 30 minutes of utilization of craft, hire charge will be calculated on pro-rata basis rounded off to next 10 minutes

(iii) The duration will be calculated from the time of casting off the jetty to the time of arrival back to the jetty

6. Miscellaneous charges:

S.No.	Description	Coastal vessel (in Rs.)	Foreign vessel (USD)
1	Use of mooring gang per mooring / unmooring operation not covered under Pilotage	2,760/-	60
2	Bollard pull test (each operation)	25,000/-	544

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SCALE OF LICENSE FEE FOR ALLOTMENT OF SPACE & WAY LEAVE CHARGES

Scale of License fee for allotment of space under Monthly License and Annual License for Port related purpose

Item No	Description of Space	Unit	License Fee
1	Way leave Charges (With effect from Calendar year 2011)		
	a. For Pipelines of 8" dia and above	Per running meter or part thereof	Rs.104*/- per calendar year or part thereof
	b. For Pipelines lesser than 8" dia	Per running meter or part thereof	Rs.52*/- per calendar year or part thereof
			* To be revised

Item No. 2	Description of Space	Unit	Reserved price in terms of annual lease rent. (Rs per Calendar month or part thereof)	Reserved price in terms of annual lease rent. (Rs per year or part thereof)
	2A. Custom bound area – Project related			
(a)	Open Space	Per one Square meter or part thereof	Rs.11 /- per calendar month or part thereof	Rs.132/- per year or part thereof
(b)	Hardened area with Sub base surface (Add 25% over the open space rate)	Per one Square meter or part thereof	Rs14/- per calendar month or part thereof	Rs.168/- per year or part thereof
(c)	Hardened area with base surface (Add 50% over the open space rate)	Per one Square meter or part thereof	Rs 17/-per calendar month or part thereof	Rs.204/- per year or part thereof
(d)	Hardened area with Concrete / Paved surface (Add 100% over the open space rate)	Per one Square meter or part thereof	Rs 22/-per calendar month or part thereof	Rs.264/- per year or part thereof
	2B. Custom bound area – Cargo related			
(a)	Open Space	Per one Square meter or part thereof	Rs.34 /- per calendar month or part thereof	Rs.408/- per year or part thereof
(b)	Hardened area with Sub base surface (Add 25% over the open space rate)	Per one Square meter or part thereof	Rs 43/- per calendar month or part thereof	Rs.516/- per year or part thereof
(c)	Hardened area with base surface (Add 50% over the open space rate)	Per one Square meter or part thereof	Rs.51/- per calendar month or part thereof	Rs.612/- per year or part thereof
(d)	Hardened area with Concrete / Paved surface	Per one Square meter or part	Rs.68/- per calendar month or	Rs.816/- per year or part

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Item No. 2	Description of Space	Unit	Reserved price in terms of annual lease rent. (Rs per Calendar month or part thereof)	Reserved price in terms of annual lease rent. (Rs per year or part thereof)
	(Add 100% over the open space rate)	thereof	part thereof	thereof
2C. Non Custom bound area (Outside the Port) – Project related				
(a)	Open Space	Per one Square meter or part thereof	Rs.11 /- per calendar month or part thereof	Rs.132/- per year or part thereof
(b)	Hardened area with Sub base surface (Add 25% over the open space rate)	Per one Square meter or part thereof	Rs 14/- per calendar month or part thereof	Rs.168/- per year or part thereof
(c)	Hardened area with base surface (Add 50% over the open space rate)	Per one Square meter or part thereof	Rs 17/- per calendar month or part thereof	Rs.204/- per year or part thereof
(d)	Hardened area with Concrete / Paved surface (Add 100% over the open space rate)	Per one Square meter or part thereof	Rs 22/- per calendar month or part thereof	Rs.264/- per year or part thereof
2D. Non Custom bound area (Outside the Port) – Cargo related				
(a)	Open Space	Per one Square meter or part thereof	Rs.34 /- per calendar month or part thereof	Rs.408/- per year or part thereof
(b)	Hardened area with Sub base surface (Add 25% over the open space rate	Per one Square meter or part thereof	Rs 43/- per calendar month or part thereof	Rs.516/- per year or part thereof
(c)	Hardened area with base surface (Add 50% over the open space rate)	Per one Square meter or part thereof	Rs 51/- per calendar month or part thereof	Rs.612/- per year or part thereof
(d)	Hardened area with Concrete / Paved surface (Add 100% over the open space rate)	Per one Square meter or part thereof	Rs 68/- per calendar month or part thereof	Rs.816/- per year or part thereof

Item No	Description of Space	Unit	License Fee
3	Building allotted for use of office accommodation. a. Building with RCC roof and terrace within the port premises b. Building with ACC sheet	Per Sq.m or part Thereof - - -	Rs.100/- per calender month or part thereof Rs.75/- per calender

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Item No	Description of Space	Unit	License Fee
	and in other similar roof like GIC within the port premises	- do -	month or part thereof
4	Covered space for use as site stores, equipment maintenance, etc.,	Per Sq.m or part Thereof	Rs.40/- per Calender month or part thereof

- The above rates for the item no.02 are effective from 1st April 2014 and escalation @ 5% compoundable per annum.
- The above rate for the item no.03 & 04 are effective from 1st April 2004 and escalation @ 5% compoundable per annum.
- The Port shall have an option to re-fix the base license fee every five years.

POLICY OF ALLOTMENT:

1. Applications for the allotment of space should be made in writing by the Port Users / Institutions connected with Port related activities addressed to the Director (Operations).
2. The space will be allotted under Monthly License if the period is up to 11 months or under Annual License if the period is more than one year but less than three years.
3. It shall be in the KPL's discretion to allot or refuse to allot space on terms of license.

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Conditions of Licensing of Space by KPL under Monthly License for a period upto eleven months

1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for one month in advance in case of allotment under monthly License as Security Deposit, which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the Licensor without any arrears. If there is any arrears of License fee, or any other amount due to the licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the Scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i.e.,) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc., if provided to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee.
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license.
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent local authorities and obtain all statutory clearances as may be required by law including environmental clearances.
9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL.
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary.
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.
13. Encroachment or unauthorised occupation of the KPL's land and stacking of cargo on the KPL's land and stacking of cargo on the KPL's Railway tracks, plants, equipment, etc., causing obstruction to the movement of

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traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed.

14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid.
16. Not to sublet or underlet, transfer or mortgage, assign to or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.
17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.
18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.
19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever.
20. If the licensee shall make default in payment of the whole or any part of the said monthly license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then and in any of such events it shall be lawful for the licensor at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and re-possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained.

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21. If there shall be any license fee due and owing to the licensor at the time of such re- entry and the licensee shall fail to pay the same on demand it shall be lawful for the licensor to distrain upon any monies which may have been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises.
22. The License shall not be automatically renewable. If the Licensee requires to renew the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made seven days before the expiry of the license period. If the licensee likes to renew beyond eleven months, the conditions applicable for Annual License for a period of one year and above, but less than three years shall automatically apply, such as the licensee shall pay License Fee for three months in advance as Security Deposit.

23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.
24. The Licensees shall vacate the space occupied by them if the license is not renewed. The monthly license shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition, the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.
25. No compensation shall be payable by the Port in the event of refusal to renew the lease.
26. The KPL shall have the right to terminate the License at any time by giving seven days notice and resume possession of space allotted. No compensation will be paid in this regard by KPL.
27. Any change in the constitution of the licensee firm or business shall in no way affect the terms of the license.
28. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur.

Conditions of Licensing of Space by KPL under Annual License for a period of one year and above, but less than three years

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1. The Licensed space shall be used for the purpose for which it is allotted.
2. The Licensee shall pay the License fee for 3 months in case of allotment under Annual License for 1 year and above but less than 3 years as Security Deposit which shall be repaid on the expiry of the License Period or termination of the License, provided that the Licensee has paid the License fee or any other amount due to the licensor without any arrears. If there is any arrears of License fee, or any other amount due to the licensor by the licensee that should be deducted from the advance made.
3. The License fee as per the scale of License Fee shall be paid by the Licensee prevailing from time to time promptly from the date of allotment of space for each Calendar Month in advance (i.e.,) before 5th of every calendar month to KPL.
4. The Licensee shall pay charges for water supply, electricity, telephone, etc. if provided, to KPL promptly.
5. The KPL shall have the right to resume possession of space wholly or partly in the space allotted to the Licensee at any time, which is not occupied by the Licensee. No compensation is payable in this regard by KPL. A proportionate reduction in fee will be allowed to the Licensee.
6. Not to use the said premises or any part thereof or suffer the same to be used otherwise than for the purpose for which the premise has been licensed without the consent in writing of the licensor first had obtained.
7. The rules and regulations framed by the Licensor from time to time shall be deemed to be part of the provisions of the license.
8. The Licensee shall comply with all rules and regulations that may from time to time be issued by the competent statutory authorities or the Inspector of Explosives, Department of Explosives, Government of India or whomsoever concerned in relation to the storage of the goods under the monthly license.
9. The Licensee shall not cause any obstruction or inconvenience to other allottees. The Licensee shall not put up any structures, additions and/or alterations in the Licensed premises without written approval of KPL.
10. To permit the KPL or its Agents with or without workmen or others at all reasonable hours to enter the said premises and to view the condition thereof and to effect all necessary repairs and to carry into effect if necessary.
11. Goods stored by the Licensee in the licensed premises under the license agreement shall be at the entire risk and responsibility of the Licensee.
12. The Licensee shall put up his own watch and ward to safeguard the materials and records kept in the allotted space and to prevent any unauthorized occupation of such space by others.
13. Encroachment or unauthorized occupation of the KPL's land and stacking of cargo on the KPL's land and stacking of cargo on the KPL's Railway tracks, plants, equipment, etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay a penalty at the rate not exceeding ten times the license fee, in addition to the cost of

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rectifying damages caused to the KPL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the KPL at the risk and cost of the licensee and penal license fee at the rate not exceeding ten times the normal rate will be levied on the space occupied by the cargo so removed.

14. No licensee shall convert the space allotted to him/them into private bonded area except with the written permission of the KPL. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL.
15. To apply and pay for all licenses and permits that may from time to time be required under the provisions of the law for the time being in force for the purpose of using the said premises as aforesaid.
16. Not to sublet or underlet, transfer or mortgage, assign to or induct into create a charge on or part with the use possession of the said premises or any part thereof to any person or persons whomsoever.
17. Not to keep or permit to be kept in the said premises any materials of dangerous nature or the keeping of which may contravene any Act or local regulations.
18. Not to carry on or permit upon the said premises or any part thereof any offensive, noisy or dangerous trade, business or occupation or use in the same for any other purpose than that for which the premises has been licensed.
19. To hold the licensor free from all risk and responsibility in respect of the goods stored in the said premises whether the same shall be lost or damaged by any cause whatsoever.
20. If the licensee shall make default in payment of the whole or any part of the license fee in advance on the days herein before mentioned whether formally demanded or not or shall become insolvent or shall go into liquidation whether voluntarily or compulsorily other than for purposes of re-construction or shall make any arrangement with their creditors or shall assign, underlet, transfer or part with the possession of the said premises or any part thereof or shall allow any offensive or dangerous stored or stacked in the said premises or shall allow any offensive or dangerous business to be carried on therein or shall neglect to perform or observe any other stipulation on their part herein contained then and in any of such events it shall be lawful for the licensor at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and re-possess and enjoy the same and thereupon this license shall absolutely cease and determine but without prejudice to any right of action of the licensor in respect of any breach of the licensee's covenants herein contained
21. If there shall be any license fee due and owing to the licensor at the time of such re- entry and the licensee shall fail to pay the same on demand it shall be lawful for the licensor to distrain upon any monies which may have

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been deposited with the licensor by the licensee or upon any goods of the licensee remaining in the said premises

22. Annual License and License below three years shall not be renewed automatically. If the Licensee requires to renewal of the License, an Application for renewal duly accompanied by the receipt of the payment of advance fee must be made two months before the expiry of the license period.
23. If the licensee likes to renew beyond two years and eleven months, the conditions applicable for long term lease shall automatically apply, such as the licensee shall pay a non-refundable premium equivalent to one year's lease rentals and shall deposit an amount equivalent to one year's lease rental as refundable security deposit etc.

24. The Licensees shall vacate the space occupied by them if the license is not renewed. The Annual License shall lapse automatically at the expiry of the License period. In case the licensees fail to hand over the space in vacant possession on the date of expiry of the monthly license granted after removing such of the structures or constructions put up, the KPL shall have the right to remove such structures and the goods stored in such space to any other alternative open or covered space in any part of the KPL's premises at the cost, risk and responsibility of the licensees and in addition, the KPL shall charge a penalty at rates not exceeding ten times the normal fees leviable under the KPL's Scale of Rates for the period the goods may have remained within the KPL's premises beyond the period for which the monthly license was granted.
25. No compensation shall be payable by the Port in the event of refusal to renew the lease.
26. The KPL shall have the right to terminate the License at any time by giving one- month notice in case of Annual License and resume possession of space allotted. No compensation will be paid in this regard by KPL

27. In the event of the license being terminated by the licensee by giving the required notice within the period of the first year of the license to make good the difference in the license fee between the rate of license fee per square metre allotted or part thereof per calendar month or part thereof leviable for occupation for a period less than one year and license fee per square metre allotted or part thereof per calendar month or part thereof mentioned in the license, from the date of commencement of the license to the date of vacation of the space allotted
28. Any change in the constitution of the licensee firm or business shall in no way affect the terms of the license
29. KPL has the right to add, alter, delete any of the above conditions time to time as may be considered appropriate and the Licensee shall comply with that without any demur

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Additional General Conditions in respect of Covered Space (Warehouse) and Covered Space other than warehouse

The licensees shall be liable for the following

1. To the said license fee being revised in accordance with the amendments to the KPL's Scale of Rates from time to time, affecting the rates of license fee laid down in the said Scale.
2. To pay the said license fee herein before reserved or the revised license fee under Clause (3) &(4)in Scale of License Fee, as the case may be, from the date of allotment of space and shall be remitted for each calendar month in advance
3. To pay in addition to the license fee stipulated above, the charges of water and electricity consumed every month at the rates fixed by the KPL from time to time, together with the installation and maintenance charges on electrical installations every month as may be fixed by the licensor from time to time.
4. To keep the doors of the premises locked and secured outside the working hours laid down by the KPL
5. To yield up the said premises at the determination of the license in goods and tenantable repair
6. Not to use the premises as Private Bonded area without prior permission from the KPL and in the event of premises being used as Private Bonded area higher rate of license fee as may be fixed from time to time shall be payable by the licensee. The KPL, shall, in addition to the fees leviable for such space, levy such penalty not exceeding ten times the normal fees leviable under the KPL's Scale of Rates on their failure to obtain the prior written permission from the KPL
7. In the event of the licensor giving the licensee notice to terminate the license, the licensor shall not be bound to pay any compensation whatsoever
8. The licensee shall not at any time during the currency of the license put up any construction over the land licensed to him except with the written permission in writing of the licensor
9. If the licensee puts up a construction without the written permission of the licensor the construction so put up shall become the property of the licensor and the licensee is not entitled to any compensation therefor
10. If the licensor does not require the construction so put by the licensee without the permission of the licensor, the licensee shall remove the construction at his cost and restore the property in as good a condition as it was at the time he was put in possession, within a reasonable time during the currency of the license failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee
11. If the licensee puts up a construction with the written permission of the licensor, the licensor shall have the option to possess the construction so put up and in case the licensor requires the construction, the licensor shall pay compensation to the licensee in a sum mutually agreed upon at the expiry of the license
12. If the licensor does not require the construction put up with the permission of the licensor or if the licensor and licensee fail to settle the quantum of compensation to be paid, the licensor is entitled to call upon the licensee to remove the construction so put up at his cost and restore the property in as

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good a condition as it was at the time the licensee was put in possession, within a reasonable time, failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee



