



VO CHIDAMBARANAR Port Authority (VOCPA)

Public Private Partnership In Development of Outer Harbour Project at VOC Port

Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port.

DRAFT CONCESSION AGREEMENT (DCA)

December 2025

Authority
Chief Engineer

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PART I CONCESSION AGREEMENT

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the..... day of, 2026
BETWEEN

1 V.O.CHIDAMBARNAR PORT represented by its Chairman, V. O. Chidambaranar Port Authority, having its office at Administrative Office, Harbour Estate Tuticorin 628 004 Tamilnadu (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part

AND

2LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with CIN _____ and having its registered office at,(hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

The Government of India had entrusted to the Authority the development, maintenance and management of “**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**” (the “Project”) on design, build, operate and transfer (the “**DBOT Annuity**” or “**Hybrid Annuity**”) basis”, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by the Authority, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

- (A) The Authority had adopted a single stage two envelope bidding process and accordingly invited proposals by its Request for Proposals dated _____ (the “**Request for Proposals**” or “**RFP**”) for qualification and short listing of bidders for construction, operation and maintenance of the above referred Project on Hybrid Annuity basis.
- (B) The Authority had prescribed the technical and commercial terms and conditions in the RFP, and invited bids comprising technical and financial bids from the bidders for undertaking the Project.

- (D) After evaluation of the bids received, the Authority had technically qualified certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising.....,..... and (collectively the “Consortium”) with.....as its lead member (the “Lead Member”)} and accepted the financial bid of the{selected bidder/ Consortium} and issued its Letter of Award No. dated (hereinafter called the “LOA”) to the {selected bidder/ Consortium requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- (F) {By its letter dated the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.}
- (G) The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on Hybrid Annuity basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the

receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 42) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;

- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) Reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as-may be extended pursuant to this Agreement;
- (m) 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; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) References to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**Indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, 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 suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent approval, authorization, notice, communication, information, report or any other correspondence required under or pursuant to this Agreement, from or by any party or the Independent Engineer, shall be valid and effective only if it is routed in physical mode (unless the law requires to send such notice, communication, etc, through physical/any other specified mode only) under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement and the Request for Proposals (“**RFP**”) forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement;

reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 **Measurements and arithmetic conventions**

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.



PART II THE CONCESSION

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) construction of the Project in a phased manner on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Project in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, operate and maintain the Project (the “**Concession**”) during the Construction Period of **1,825 (one thousand eight hundred and twenty five) days** (comprising of Phase-1 Construction Period of 1095 (one thousand and ninety five) days and Phase-2 Construction Period Construction Period of 730 (seven hundred and thirty) days) and Operation Period of 10 (Ten) years commencing from respective Phase COD, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. Further COD of Phase -1 and Appointed date for Phase -2 shall differ by a period as decided by the Authority based on business scenario, subject to a maximum of 730 days. Notwithstanding to the above, if the Concessionaire prefers a lower period, shall discuss with the Authority, who shall discuss with PPP operator and finalize and the decision of Authority shall be honoured.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) enter upon, occupy and use the 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;
- (c) finance and construct the Project;
- (d) manage, operate and maintain the Project;
- (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;

- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 22, 28,38 and 41, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days thereafter. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- (b) procured all Applicable Permits and clearances required for the Project and to be secured by the Authority, as set-out in Clause 1.2 of Schedule-E; provided that in case any modification/alteration/deviation to the existing environmental clearance is necessitated owing to Concessionaire’s requirements, and the same entails a delay in procuring the revised environmental clearance by the Authority beyond the stipulated period of 150 days, such delay shall not be attributable to the Authority in any manner or circumstances whatsoever; and
- (c) deleted;
- (d) deleted.
- (e) provision of or putting in place arrangements for the provision of Supporting Project Infrastructure by the Authority as provided in the Schedule T of the Agreement;

Provided that the Authority shall be entitled to an additional period, not exceeding 90(ninety) days beyond the period of 150 days without being liable for payment of any damages, for fulfilment of the Conditions Precedent set forth in this Clause.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 150 (one hundred and fifty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority along with the Additional Performance Security, if required in terms of Clause 9.1 and Clause 9.7 of this Agreement. For the avoidance of doubt, it is clarified and agreed that the Concessionaire is required to provide the Performance Security and the Additional Performance Security, if required, within 30 days of signing of this Agreement;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Part-I of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and

- (h) furnished to the 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;

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfil each parties' Conditions Precedent is an independent obligation of the respective Party.

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

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to the maximum limit equal to the amount of the Bid Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.3.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to the amount of the Bid Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the

concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security and the Additional Performance Security, if any, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
- (c) perform and fulfil its obligations under the Financing Agreements executed for phased development of the Project;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

- (e) upon written request from the Authority, make reasonable efforts to facilitate the acquisition of land and procuring of environmental and forest clearances required for the purposes of the Agreement;
- (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) ensure compliance with environmental clearance and undertake to prepare and execute Environment Management Plan;
- (j) make, or cause to be made a Project website for the Project;
- (k) procure and maintain intellectual property permits as may be required in accordance with Applicable Laws;
- (l) ensure compliance with Applicable Laws relating to Environment, Health and Safety undertake to prepare and execute disaster management plan;
- (m) ensure and cause timely payment of utility charges in respect of water, sewage, electricity, telecommunication, internet and cable charges etc. used at the Project;
- (n) coordinate with local police and healthcare authorities in case of occurrence of accidents anywhere on the Site. and
- (o) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other

agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 days from the receipt of such request from the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders

Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). Further, it is clarified that in case both the Authority and Lenders’ Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the EPC Contractor and an O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal along with the draft agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of

grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

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

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (i) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as

on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function

5.6 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

5.7 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of **Outer Harbour VO Chidambaranar Port Project**

5.8 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.9 Obligations relating to Local Content

The Concessionaire shall abide by obligations relating to Local Content prescribed in the Dredging Policy or any revised guidelines issued by Ministry of Ports, Shipping and Waterways in relating to obligations relating to Local Content from time to time. The Concessionaire further undertakes to comply with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE-II) dated September 16, 2020, as

amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.

5.10 Other obligations

5.10.1 The Concessionaire acknowledges, agrees and undertakes Concessionaire shall comply with the measures as set out in the Dredging Policy and any subsequent amendments, as may be applicable to the Project. This shall inter-alia include measures relating to Environment, Health, Safety, and Local Content as set out in the referred guidelines.

5.10.2 The Concessionaire also acknowledges, agrees and undertakes that guidelines issued by Director General (Shipping), Mumbai from time to time in terms of relevant provisions of Merchant Shipping Act shall be applicable, except where such provisions are exempted by Government of India. Dredgers shall be bound to follow Indian Merchant Shipping Act and regulations, unless any specific provision is exempted by the Government of India. The MoPSW may in consultation with Director General (Shipping) provide exemptions from time to time as may be required.

5.10.3 The Concessionaire further acknowledges, agrees and undertakes guidelines issued by MoPSW for security clearance of the bidder for Port Project under PPP, including dredging project, shall be applicable and Concessionaire shall provide requisite details as per the format prescribed at the time of seeking clearance. Indicative format for security clearance has been set out in Schedule U.

ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following
 - (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
 - (d) Deleted
 - (e) Subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
 - (f) Assist the Concessionaire in procuring police assistance for regulation of Users, removal of trespassers and security on or at the Project;
 - (g) Not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement;

- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
- (j) undertake rehabilitation and resettlement of persons affected by construction of the Project and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement;
- (k) subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring approvals.
- (l) make available all records of marine geotechnical and other Site investigation 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; and
- (m) In addition to any of its other obligations in this Agreement, the Authority shall arrange for and provide the following:
 - (i) waterside safety and safety of navigation;
 - (ii) 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;
 - (iii) provide for/put in place arrangements for provision of Supporting Project Infrastructure as provided in the Agreement ;
 - (iv) 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 Site;

6.2 Maintenance obligations prior to Appointed Date

6.2.1 During the Development Period, the Concessionaire shall be obligated to maintain the existing Site for the purpose of undertaking Construction Works upon achievement of Appointed Date. It is deemed that the Concessionaire has made necessary provisions for inclusion of costs related to maintenance during the Development Period in its Bid. Provided that in case Appointed Date is not achieved and the Concession Agreement is terminated prior to achievement of Appointed Date, the Concessionaire shall not be entitled to reimbursement of any cost for maintenance during Development Period.

6.2.2 Deleted

6.2.3 Deleted

6.3 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. The Authority shall endeavour to convey its decision on such request of the Concessionaire within 30 days of receipt of the proposal by the Authority.

6.4 Additional Land, Utilities and facilities

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the Scope of Work at any time during the concession period, the Concessionaire may approach the Authority for providing additional land, utilities and facilities. Authority on being approached by Concessionaire with due justification of the additional land, utilities, facilities requirement as applicable shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per Scope of Project. Even if

authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient by Concessionaire for providing services as per Scope of Project.

For avoidance of doubt, Authority obligation under this Clause are limited to providing land and access for laydown facilities set out in this Agreement and temporary access to site within the Port. Any land requirement outside the Port for access to Site, transportation of materials or any purpose whatsoever, shall be procured by the Concessionaire at its own cost and risk.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement -will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (f) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date 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 and Articles of Association {or those of any member of the Consortium} 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) 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 the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this 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;
- (j) 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;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposals shall hold at least 26% (twenty six per cent) of Equity during the Construction Period and six months thereafter along with its Associates;

Provided further that any such request made under Clause 7.1(k) and / or Article 42, at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders

- (l) {the selected bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) all its rights and interests in the Project shall pass to and vest in the 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 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;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (o) 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 Authority in connection therewith;
- (p) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

(q) All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under this Agreement;
- (d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) It has complied with Applicable Laws in all material respects;
- (g) It has the right, power and authority to manage and operate the Project; and
- (h) It shall procure good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or

incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, nature of the climatic, hydrological and general physical conditions of the Site/Port Assets and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority



contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III DEVELOPMENT AND OPERATIONS

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 30(thirty) days from the date of this Agreement, an Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure II of Schedule –F), Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or irrevocable and unconditional Bank Guarantee (including e-Bank Guarantee) from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹ in the form set forth in Schedule-F (the “**Performance Security**”) towards Project Phase-1. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

The Concessionaire is required to submit subsequent Performance Security, prior to commencement of construction Project Phase-2, the Concessionaire shall be liable to furnish the Performance Security for a sum equivalent to Rs. *****/-(Rupees ***** crore)² for Project Phase-2 substantially in the form set forth in Schedule F.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security towards Project Phase-1 is not provided by the Concessionaire within a period of 30(thirty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased

¹ Calculated @ 5% (five per cent) of the 94% of the Bid Project Cost (commensurate to Project Phase-1)
² Calculated @ 5% (five per cent) of the 6% of the Bid Project Cost (commensurate to Project Phase-2)

with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

Further, in the event Performance Security towards Project Phase-2 is not provided by the Concessionaire 30(thirty) days prior to commencement of construction Project Phase-2, the Authority may levy and recover Damages equal to 0.2% (zero point two per cent) of the Performance Security for each day of default hereunder.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent.

Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31.

Provided that upon appropriation on account of Concessionaire's Default the Concessionaire shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, save and except as provided in Clause 4.5 of this Agreement, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 30% (thirty per cent) of the Bid Project Cost; provided, however, that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

Further, the Performance Security given for the Project Phase-2 shall remain in force and effect for a period of one year from the commencement of Project Phase-2, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 30% (thirty per cent) of the Bid Project Cost.

9.4 Deleted

9.5 Deleted

9.6 References to Performance Security

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

9.7 Additional Performance Security

The Concessionaire shall along with the Performance Security provide to the Authority an Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India), Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque or irrevocable and unconditional Bank Guarantee (including e-Bank Guarantee) from a Bank for a sum equivalent to Rs. ***** crore (Rupees

***** crore)³ in the form set forth in Schedule-F (the “Additional Performance Security”), to be modified, mutatis mutandis, for this purpose as security to the Authority if the Bid Project Cost of the Selected Bidder is lower by more than 10% with respect to the Estimated Project Cost. The requirement of submitting the Additional Performance Security shall be a Condition Precedent. Failure to maintain the Additional Performance Security shall be treated as Concessionaire Default as per Clause 31.1.1

9.8 Appropriation and Release of Additional Performance Security

Notwithstanding anything contrary contained in this Agreement, if this Agreement is terminated, except for Authority Default or due to the Force Majeure, prior to achievement of the III (third) Project Milestone, the Authority shall have the right to encash the Additional Performance Security in addition to the Performance Security. However, the Additional Performance Security shall be released upon achievement of Project Milestone – III as defined in Schedule G and shall be released immediately and no later than 30 (thirty) days from the certification of achievement of Project Milestone- III.

³ Calculated as 10% of the difference in the Estimated cost and the Bid Project Cost

ARTICLE 10

RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise the area demarcated in Schedule-A inter alia including the waterfront, access channel, laydown area, offshore area for reclamation, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (**the “Site”**). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the area demarcated for the Project as set forth in Schedule-A.

10.2 License, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (**the “Licensed Premises”**), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way

appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 deleted

10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 deleted.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the location data of demarcated //offshore area and access channel, Concessionaire laydown area, vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in

accordance with the provisions of this Agreement and for no other purpose whatsoever.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access, physical possession and Right of Way the entire area as demarcated in Schedule A, and in the event Financial Close is delayed on account of delay in grant of such vacant access, physical possession and Right of Way, the Authority shall be liable to payment of Damages solely under the provisions of Clause 4.2. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 deleted

10.3.5 deleted.

10.3.6 deleted

10.3.7 deleted

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and

undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encumbrances

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

For avoidance of doubt, Concessionaire shall bear all costs and charges for any temporary jetty(ies) for loading/unloading of materials to/ from barges, temporary road or other infrastructure within or outside the Site as may be required by it for the purposes of the Project. Authority obligation shall be limited to providing Site as set out in this Agreement and temporary access to site within the Port.

10.7 Access to the Authority and Independent Engineer

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities,

structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government - Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

10.9 Land for Construction Laydown Area

10.9.1 The additional land earmarked for this purpose in Schedule-A shall be utilized by the Concessionaire for provision of laydown facilities and other preparatory work which may include temporary storage area for equipment, tools, vehicles, and materials, office establishment, sanitary facilities, assembly area etc

10.9.2 The Concessionaire may procure additional land at its own cost and expense for construction and operation of additional facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Parties agree that any land acquired by the Concessionaire under this Clause shall be retained by it after the Transfer Date and the Authority shall have no right or lien on such land at any time during or after the Concession Period. The Parties further agree that the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld.

10.10 Access to other users of the Site

10.10.1 It is expressly agreed that certain areas of the Site, at the start of the Concession Period consist of areas of open water and land in use by Authority and/or other entities. The Concessionaire Right of Way in respect of the Site and the Licensed Premises shall not be exclusive and shall be subject to the existing right of way and access to the Site by others shall persist. The Concessionaire shall be responsible for making all reasonable allowances to accommodate such users within the Site, to such an extent that they do not interfere with the Construction Works, until such time as progress of the such works make it impractical. Such accommodation of others shall not relieve the Concessionaire of any of its obligations for the care of the Construction Works and security of the Site under the Agreement. The Concessionaire shall be responsible for ensuring that the access to the Site by other entities and operations thereof does not interfere with the progress of the Construction Works and shall co-operate fully, as necessary, with other users of the Site.

10.10.2 There shall be no compensation and/or financial consideration due and payable to Concessionaire for providing access to the other users of Site in accordance with above Clause 10.10.1.

ARTICLE 11 UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

11.1.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use and access to any facility owned, operated or maintained by the Authority, or other entities owning the existing roads, right of way or utilities within the Site shall be maintained at all times.

11.1.2 All existing highways and roads used by vehicles or equipment of the Concessionaire or any of the sub-contractors or suppliers of materials or plant, and similarly any new roads which are part of the Port and which are being used by traffic, shall be kept clean and clear of all dust/mud/boulder or other extraneous materials dropped by the said vehicles. Similarly, all dust/mud/boulder or other extraneous materials from the works spreading on these highways shall be immediately cleared by the Concessionaire. Clearance shall be effected immediately by sweeping and removal of debris, and all dust, mud and other debris shall be removed entirely from the road surface. Additionally, if so directed by the Independent Engineer, the road surface shall be hosed or watered using suitable equipment.

11.1.3 Damages to existing road: Any structural damage and loss of riding surface caused to the existing roads, owned by Government/Port or otherwise, by the Concessionaire construction vehicles/ equipment or material transportation equipment shall be made good without any extra cost. If deemed required by the Independent Engineer, Concessionaire shall undertake strengthening work prior to movement of over-dimensional/ project cargo on existing roads.

Compliance with the foregoing Clause 11.1.1 and 11.1.2 shall not relieve the Contractor of any responsibility for complying with the requirements of any authority in respect of the roads used by him.

11.2 Shifting of obstructing utilities

11.2.1 The Concessionaire shall, subject to Applicable Laws and with the assistance of the Authority, undertake shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project in accordance with this Agreement, as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. The cost of shifting of such, utilities shall be borne by Concessionaire. The Authority will provide assistance to the Concessionaire for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Concessionaire shall execute such utility shifting works under the supervision of utility owning agency and Independent Engineer (IE) in accordance with the provision of agreement. The supervision charges only shall be paid by the Authority to the Utility Owning Entity. In the event of any delay in shifting thereof, the Concessionaire shall be responsible for failure to perform any of its obligation here under if such failure is not as a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephones cables, as the case may be.

The dismantled material/scrap of existing Utility to be shifted/dismantled shall belong to the Concessionaire who would be free to dispose-off the dismantled material as deemed fit by them.

The work of shifting of utilities can be taken up by the Concessionaire any time after signing of the Agreement

11.2.2 Deleted.

11.3 New utilities and roads

The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3

shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12 CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

In addition to its obligations and conditions specified, prior to commencement of Construction Works for each phase, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology including design method statement, quality assurance procedures including quality management plan, environment management plan in compliance with the Environmental Clearance, safety & health requirement, logistics plan, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) procure necessary clearance and approvals for mobilization of dredgers, other construction equipment and national & international staff as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits;
- (d) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (e) Make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2 Drawings

12.2.1 Reference Drawings

The Reference Drawings are the Port Master Layout and drawings prepared by the Authority for the Project as set out in Annex-IV of the Schedule-A (the

“Reference Drawings”). The Reference Drawing defines the Project and phase-wise boundary, interface requirement, and indicates minimum design requirements of the Agreement. The Concessionaire shall verify the adequacy of the Reference Drawing and shall prepare the detailed design and construction drawings based upon the Reference Drawings while ensuring compliance with boundary limits and other requirements set out in the Agreement.

12.2.2 Concessionaire Drawings

In respect of the Concessionaire’s obligations relating to the Drawings of the Project as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings of each phase to the Independent Engineer for review.
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Reference Drawings, Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its

observations, if any, within 7 (seven) days of receipt of the revised Drawings.

- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Project, finished road level and general arrangement drawings of major bridges, flyovers and grade separators, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply mutatis mutandis to the review and comments hereunder.
- (g) Within 90 (ninety) days of COD for each phase, as the case maybe, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as- built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.3 Construction of the Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.

The 1095th (one thousand and ninety fifth) day from the Appointed Date shall be the scheduled date for completion of the Project Phase-1 (the “**Phase-1 Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project Phase-1 shall be completed on or before the Phase-1 Scheduled Completion Date.

COD of Phase -1 and Appointed date for Phase -2 shall differ by a period as decided by the Authority based on business scenario, subject to a maximum of 730 days. Notwithstanding to the above, if the Concessionaire prefers a lower period, shall discuss with the Authority, who shall discuss with PPP operator and finalize and the decision of Authority shall be honored.

The 730th (seven hundred and thirtieth) day from the Phase-2 Appointed Date shall be the scheduled date for completion of the Project Phase-2 (the “**Phase-2 Scheduled Completion Date**” or “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project Phase-2 shall be completed on or before the Phase-2 Scheduled Completion Date.

Further, the Concessionaire shall undertake the designing, engineering and Construction Works related to the project phases of the Project in adherence to Schedule-G and achieve the construction completion and commissioning for the Project Phase-1 and Project Phase-2 in accordance to the Project Milestones specified under Schedule-G.

12.3.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for the respective Phase for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Phase-1 Scheduled Completion Date or Phase-2 Scheduled Completion Date, as the case maybe, are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Phase-1 COD is achieved on or before the Phase-1 Scheduled Completion Date and Phase-2 COD is

achieved on or before the Phase-2 Scheduled Completion Date, the Damages paid under this Clause 12.3.2 for the respective Phase shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 In the event that the Project Phase-1 is not completed and Phase-1 COD does not occur within 270 (two hundred and seventy) days from the Phase-1 Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.3.4 In the event that the Project Phase-2 is not completed and Phase-2 COD does not occur within 180 (one hundred and eighty) days from the Phase-2 Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.4 Maintenance during Construction Period

12.4.1 During the Phase-2 Construction Period, the Concessionaire shall maintain, at its cost, the Project Facilities developed in the Project Phase-1 and shall ensure that there is no settlement in the reclaimed area or damage to Project Facilities developed in the Project Phase-1, and shall undertake the necessary repair and maintenance works for this purpose; For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.

12.4.2 In the event of default by the Concessionaire in discharging the obligations specified in Clause 12.4.1, the Authority may levy and recover Damages equal to 0.2% (zero point two per cent) of the Performance Security for Phase-1 for each day of default hereunder.

12.4.3 The Parties expressly agree that pursuant to the provisions of Clause 12.4.1, the Concessionaire shall, about 7 (seven) days prior to the date of this Agreement and with prior notice to the Authority and along with the Authority's Representative, undertake video recording of the condition and status of the Project, which recording shall be compiled into a 3 (three)-hour

digital video disc or any substitute thereof, and shall provide 3 (three) copies of such recording to the Authority within 2 (two) days of the date of this Agreement. The Authority may, in its discretion, undertake another video recording in the presence of the Concessionaire's representative, within 7 (seven) days of the date of this Agreement, and substitute its video recording for the video recording undertaken by the Concessionaire. The Parties further agree that such video recording shall constitute evidence of the status and condition of the Project as on the date of such recording

12.5 Deleted

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer. The Concessionaire shall also submit a detailed report (along with each monthly report) indicating the locations and movements of all construction vehicles and indicating the locations and operations of dredgers by way of installing a functional Global Positioning System (GPS), which shall include, but not limited to, the following information:

- i. Real-time location data of each construction vehicle and mileage covered by each vehicle.
- ii. Timestamps indicating the start and end times of vehicle movements
- iii. Real-time location data of each dredger and timestamps indicating dredger operations
- iv. Photography & Videography (Drone Shoot) for the monitoring the progress
- v. S – Curve.

The Concessionaire shall be responsible for ensuring the accuracy and integrity of the GPS tracking data.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or

submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance and Schedule D. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the

avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Milestone or Project Completion Date.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the 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 Authority, Such work threatens the safety of the Users, equipment, maintenance or any individual or about the Project. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire

to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

13.6 Video recording

13.6.1 The Concessionaire, at its own cost, shall carryout video recording of Project every month since award of work till completion of construction and during O&M period and shall undertake a Drone survey biannually during the Concession Period. Further, the Concessionaire shall provide to the Authority and to the Independent Expert for every calendar quarter , a video recording / Drone survey, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter. The Authority may require such video recording to be carried out along with the authorized representative(s) of the Authority.

13.6.2 The Concessionaire shall provide write to Independent Engineer 15 days before the proposed Video recording and/or Drone survey, regarding the schedule of Video recording and/or Drone survey and methodology thereof, to be undertaken in accordance with Clause 13.6.1 and seek approval from

the IE. Upon receipt of the written request from Concessionaire, the Independent Engineer shall approve the schedule and methodology of Video Recording and/or Drone survey, or suggest amendments thereof.

13.6.3 As the Video recording and/or Drone videos/ reports will be permanent record on Project Website and will be used as evidences during dispute resolution process before Arbitral Tribunals/ Courts including Supreme Court, the Video recording and/or Drone survey shall be carried out carefully and correctly without distortions/ tampering by all parties concerned. The amount spent on recording shall be charged to Concessionaire to the extent covered in the agreement.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 No later than 30 (thirty) days prior to the likely completion of each phase, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to 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 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, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

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

Specifications and Standards. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall apply to all phases of the Project

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful for each phase, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J for the respective phase, hereinafter referred to as "Phase-1 Completion Certificate" or "Phase-2 Completion Certificate" and referred to individually as "Phase Completion Certificate", as may be applicable. Pursuant to issuance of such completion certificate for both phase, Independent Engineer shall issue the certificate declaring completion of the Project (the "**Completion Certificate**") and such date referred to as the "Project Completion Date".

14.3 Provisional Certificate

14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J for the respective phase, hereinafter referred to as "Phase-1 Provisional Certificate" or "Phase-2 Provisional Certificate" and referred to individually as "Provisional Certificate", as may be applicable. if the Tests are successful and the respective phase can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority; provided further that the Punch List shall also include the cost of completion for each of the outstanding items.

14.3.2 The Parties hereto expressly agree that a phase wise provisional certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating respective phase of the Project, if the

Concessionaire has completed construction of 90% of the area to be reclaimed in the respective phase in accordance with Schedule-B and area required for the proposed terminals as per Master Plan in the respective phase is available in entirety. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed phase, and the rights and obligations of the Concessionaire for and in respect of such completed phase of the Project shall be construed accordingly.

It is further clarified that reference to area reclaimed hereinabove excludes the protection wall and design slopes of the Shore protection bund.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List for respective phase shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons

solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer determines that the Project or any phase thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Phase Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 15 ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Project shall be deemed to be complete when the Phase Completion Certificate or the Provisional Certificate, as the case may be, is issued for the respective phase under the provisions of Article 14, and accordingly the commercial operation date of the Phase-1 of Project shall be the date on which such Phase-1 Completion Certificate or the Phase-1 Provisional Certificate is issued (the “**Phase-1 COD**”) and the commercial operation date of the Phase-2 of Project shall be the date on which such Phase-2 Completion Certificate or the Phase-2 Provisional Certificate is issued (the “**Phase-2 COD**”). The Project Phase-1 shall enter into commercial service on Phase-1 COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments toward Phase-1 in accordance with the provisions of this Agreement. The Project Phase-2 shall enter into commercial service on Phase-2 COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments toward Phase-2 in accordance with the provisions of this Agreement.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if Phase-1 COD does not occur prior to the 91st (ninety first) day after the Phase-1 Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority, calculated in a telescopic manner, as follows:

- For delay from the 91st (ninety-first) day up to and including the 121st (one hundred twenty-first) day: **0.2%**(zero point two per cent) of the amount of Performance Security for Phase-1 **per day**, until Phase - 1 COD is achieved;
- For delay from the 122nd (one hundred twenty-second) day up to and including the 151st (one hundred fifty-first) day: **0.3%** (zero point three per cent) of the amount of Performance Security for Phase-1 **per day**, until Phase - 1 COD is achieved;

- For delay from the 152nd (one hundred fifty-second) day up to and including the 181st (one hundred eighty-first) day: **0.4%** (zero point four per cent) of the amount of Performance Security for Phase-1 **per day**, until Phase - 1 COD is achieved;
- For delay from the 182nd (one hundred eighty-second) day up to and including 270th (two hundred and seventy) day: **0.5%** (zero point five per cent) of the amount of Performance Security for Phase-1 **per day**, until Phase-1 COD is achieved.

Upon failure of the Concessionaire to pay the said Damages, the same shall be paid along with interest of Bank Rate plus 3% and shall be deducted from the 1st (first) Annuity Payment for Phase-1. In case the Damages and the interest thereof are more than the 1st Annuity payment for Phase-1 then the balance Damages along with interest thereof shall be recovered from any further amount due and payable to the Concessionaire excluding O&M Payments but including interest to be paid on reducing balance of the Completion Cost remaining to be paid along with the 1st Annuity or from further Annuity payments.

Subject to the provisions of Clause 12.3, if Phase-1 COD does not occur prior to the 91st (ninety first) day after the Phase-2 Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority, calculated in a telescopic manner, as follows:

- For delay from the 91st (ninety-one) day up to and including the 121st (one hundred twenty-first) day: **0.2%** (zero point two per cent) of the amount of Performance Security for Phase - 2 **per day**, until Phase - 2 COD is achieved;
- For delay from the 122nd (one hundred twenty-second) day up to and including the 151st (one hundred fifty-first) day: **0.3%** (zero point three per cent) of the amount of Performance Security for Phase -2 **per day**, until Phase - 2 COD is achieved;
- For delay from the 152nd (one hundred fifty-second) day up to and including 180th (one hundred and eighty) day: **0.4%** (zero point four per

cent) of the amount of Performance Security for Phase - 2 **per day**, until Phase - 2 COD is achieved.

Upon failure of the Concessionaire to pay the said Damages, the same shall be paid along with interest of Bank Rate plus 3% and shall be deducted from the 1st (first) Annuity Payment for Phase-2. In case the Damages and the interest thereof are more than the 1st Annuity payment for Phase-2 then the balance Damages along with interest thereof shall be recovered from any further amount due and payable to the Concessionaire excluding O&M Payments but including interest to be paid on reducing balance of the Completion Cost remaining to be paid along with the 1st Annuity or from further Annuity payments.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The 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 (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining 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**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (**the “Change of Scope Order”**) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 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 under this Article 16.

16.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to

determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Bid Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Bid Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; 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 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 per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder⁴.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority or under the provision of Clause 10.3.4 of this Agreement, the Authority shall follow the following process for calculation of total cost of reduced Scope

- I. On direction by the Authority, the Independent Engineer to assess the civil cost of the reduced Scope, as per the schedule of rates applicable on the Bid Due Date.
- II. The civil cost of the reduced Scope shall be multiplied by the 1.05 to arrive at the estimated cost of reduced Scope.
- III. The estimated cost of reduced Scope shall then be multiplied by the ratio of Bid Project Cost to Estimated Project Cost to arrive at the Total Cost of Reduced Scope.

On or before a Payment Milestone immediately succeeding the date of finalization of such Reduction in Scope, the Bid Project Cost shall be reduced by the Total Cost of Reduced Scope and all payments made or to be made to the Concessionaire shall be suitably adjusted and recoveries, if any, shall be made from the payment to be released on that Payment Milestone immediately succeeding the date of finalization of Reduction in Scope.

For the avoidance of doubt, it is agreed that upon the Reduction of Scope and revision of Bid Project Cost, all references to Bid Project Cost would

⁴The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

mean the revised Bid Project Cost and all the payments would be calculated as per the revised Bid Project Cost.

16.6.2 For determining the obligations of the Concessionaire under this Clause

16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

16.7 Effect of Change in Scope on the O&M Costs

Pursuant to the provisions if this Article 16, if the Change in Scope leads to a reduction or increase in the length of Shore protection bund under O&M or area under In-port rail yard development under O&M or length of internal roads under O&M, the O&M Payments as provided in Clause 23.7 shall be reduced or increased in proportion to the reduction or increase in the Scope under O&M and applicable weightages of that component as defined below. The weightages to be considered in Change in Scope for these components shall be as per Schedule G.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Facilities set out for O&M in Schedule K of this Agreement (the “O&M Facilities”) either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) Procuring and ensuring safe, smooth and uninterrupted use of the O&M Facilities of the Project , including prevention of loss or damage thereto, during normal operating conditions;
- (b) Minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State and/or Authority;
- (c) Carrying out periodic preventive maintenance of the O&M Facilities of the Project in accordance with Schedule-K;
- (d) undertaking routine maintenance including prompt repairs of protection bund, reclaimed area and laydown area in accordance with Schedule-K ;
- (e) Undertaking major maintenance such as repair of protection bund, reclaimed area in accordance with Schedule-K;
- (f) Provide to the Authority/Independent Expert the reports on a regular basis during the Operations Period in accordance with the provisions of this Agreement;
- (g) Preventing, with the assistance of the concerned law enforcement agencies, any unauthorized use of the Project, encroachments on, or unauthorized entry to the Project as may be required;
- (h) Protection of the environment and provision of equipment and materials thereof;
- (i) Deleted

- (j) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (k) Complying with Safety and Health Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the Location identified by the Authority and/or Independent Engineer.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach Road.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period; the O&M Facilities of the Project conforms to the maintenance requirements set forth in Schedule-K (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 No later than 90 (ninety) days prior to the Phase-1 Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive

maintenance which may be reasonably necessary for maintenance and repair of The Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Program

17.4.1 On or before Phase-1 COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual program of preventive, urgent and other scheduled maintenance (the “**Maintenance Program**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Program shall include with regards to completed phase(s):

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) Criteria to be adopted for deciding maintenance needs;
- (d) Intervals and procedures for carrying out inspection of all elements of the Project;
- (e) Intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) Arrangements and procedures for carrying out safety related measures; and
- (g) Intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.5 Safety, breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, diversions, breakdowns and accidents attributable to the Concessionaire, it shall follow the relevant operating

procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the O&M Facilities of the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes.

17.6 De-commissioning due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority Without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

17.6.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Project closure

17.7.1 Save and except as provided in Clause 17.6, the Concessionaire shall not close any part of the O&M Facilities of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such

request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to any closure for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when usage of the Project is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.5 % (zero point Five per cent) of the Performance Security, for each day of delay until that part of the Project has been re-opened for use.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 2% (two per cent) of the Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the Authority

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and

take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 28.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 28. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards,

Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

17.14 Deleted.

17.15 Installation and operation of CCTV

The Concessionaire shall install and operate a closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

17.16 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site.

ARTICLE 18

SAFETY & HEALTH REQUIREMENTS

18.1 Safety & Health Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).

18.1.2 The Authority shall appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken and funded in accordance with the provisions of Article 16.

ARTICLE 19 MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 During the Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:

- (a) performance as per Annexure II of Schedule K achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the month, as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Inspection

The Independent Engineer shall inspect the Project at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the

safety and security of the Users and the Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.5, accidents and unusual occurrences on the Project shall include:

- (a) Death or injury to any person;
- (b) Damaged or dislodged fixed equipment;
- (c) Any damage or obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- (d) Disablement of any equipment during operation;
- (e) Communication failure affecting the operation of the Project;
- (f) Smoke or fire;
- (g) Flooding of the Project; and
- (h) Such other relevant information as may be required by the Authority or the Independent Engineer.

ARTICLE 20

REGULATION AND MANAGEMENT

20.1 Protection of Protected Areas

Concessionaire shall ensure that there is no adverse structural or ecological impact caused to the Protected Areas due to Construction Works and O&M of Project. Further, Concessionaire shall ensure that access to the Protected Areas is not restricted due to dredger and/or other vessel movement undertaken by the Concessionaire.

20.2 Navigational Aids

During the Concession Period, the Concessionaire shall not interfere with shipping and navigation or other traffic activities around the port site. The Concessionaire shall provide all temporary and navigational aids, markers, lights and notices required for the works or required by law, regulations, and all authorities having jurisdiction over the area covered by the work on land or at sea.

20.3 Support to fisherman community

The Concessionaire shall, at all times, ensure that the movement of fishing boats or fishermen communities shall not be disturbed during the Concession Period.

ARTICLE 21 INDEPENDENT ENGINEER

21.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-M, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 60 (sixty) days from the date of this Agreement and shall be for a period of Construction Period plus six (6) months. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule-M, and such procedure shall be repeated after expiry of each appointment.

21.2 Duties and functions

21.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-N.

21.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-N.

21.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

21.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

21.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-M, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

21.4 Termination of appointment

21.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 21.1.

21.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 21.1.

21.5 Authorized signatories

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

21.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

21.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate

and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 21.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

PART IV FINANCIAL COVENANTS

ARTICLE 22

FINANCIAL CLOSE

22.1 Financial Close

22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 150 (one hundred and fifty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 150 (one hundred and fifty) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 270 (two hundred and seventy) days from the date of this Agreement, the Concessionaire shall be entitled to a further period not exceeding 95 (ninety five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 270 (two hundred and seventy) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

22.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

In the event the Concessionaire proposes to keep separate Financial Close for each phase, it shall at least 30 (thirty) days prior to the scheduled date of commencement of construction for the relevant phase, provide to the Authority all the information as required under this Clause 22.1.2. However, it shall be the responsibility of the Concessionaire to ensure that Financing Agreements for the respective phase(s) do not contain anything contrary to the terms of this Agreement or proposes or is likely to impose any financial obligation or liability on the Authority beyond the terms of this Agreement.

22.2 Termination due to failure to achieve Financial Close

22.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 28.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement

shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

22.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash there from an amount equal to the Bid Security.

ARTICLE 23 PAYMENT OF BID PROJECT COST

23.1 Bid Project Cost

The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs.....(Rupees.....) (The “**Bid Project Cost**”)^f. The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement. The Bid Project Cost shall be exclusive of GST, which shall be paid to the Concessionaire by the Authority at the applicable rates. For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority to the Concessionaire and may be less than, equal to, or more than the Estimated Project Cost.

Further, the Bid Project Cost shall deem to be apportioned to the Project Phase-1 equivalent to 94% of the Bid Project Cost (the “Phase-1 BPC”) and apportioned to the Project Phase-2 equivalent to 6% of the Bid Project Cost (the “Phase-2 BPC”).

23.2 Adjusted Bid Project Cost

23.2.1 The Bid Project Cost specified in Clause 23.1 shall be revised from time to time in accordance with the provisions of this Clause 23.2 to reflect the variation in Price Index occurring after the Reference Index Date immediately preceding the Bid Date.

23.2.2 The Bid Project Cost adjusted for variation between the Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date immediately preceding the Appointed Date shall be deemed to be the Bid Project Cost at commencement of construction.

^fBid Project Cost shall be the amount specified in the Bid of the selected Bidder.

23.2.3 For every month occurring after the Appointed Date, the Authority shall compute the variation in Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date preceding the date of Invoice, and shall express the latter as a multiple of the former (the **“Price Index Multiple”**). All Invoices to be submitted by the Concessionaire to the Authority for and in respect of the Construction Period shall be the product of the relevant proportion of the Bid Project Cost and the Price Index Multiple applicable on the date of Invoice. For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Bid Date, say January 31, 2016, is 200 (two hundred); (b) the Invoice is submitted on October 15, 2017; and (c) the Price Index as on September 30, 2017 is 210 (two hundred and ten), then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05 (one point zero five).

23.3 Payment of Bid Project Cost

23.3.1 45% (forty-five per cent) of the Bid Project Cost apportioned to the respective phase, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 10 (ten) equal instillments of 4.5% (four-point five percent) each during the construction period of the respective phase in accordance with the provisions of Clause 23.4.

Accordingly, it is understood that 45% (forty-five per cent) of the Phase-1 BPC, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 10 (ten) equal instillments of 4.5% (four point five per cent) each during the Phase-1 Construction Period in accordance with the provisions of Clause 23.4.

Further, that 45% (forty-five per cent) of the Phase-2 BPC, adjusted for the Price Index Multiple, shall be due and payable to the Concessionaire in 10 (ten) equal instalments of 4.5% (four point five per cent) each during the Phase-2 Construction Period in accordance with the provisions of Clause 23.4.

23.3.2 The remaining Phase-1 BPC, adjusted for the Price Index Multiple, shall be due and payable in 20 (twenty) biannual instalments commencing from the 180th (one hundred and eightieth) day of Phase-1 COD in accordance with the provisions of Clause 23.6.

The remaining Phase-2 BPC, adjusted for the Price Index Multiple, shall be due and payable in 20 (twenty) biannual installments commencing from the 180th (one hundred and eightieth) day of issue of Completion Certificate in accordance with the provisions of Clause 23.6.

23.4 Payment during Construction Period

Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones⁵, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an instalment equal to **4.5% (four point five per cent)** of the Phase-1 BPC or Phase-2 BPC, as the case may be, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.

For the purpose of this Clause 23.4, the Payment Milestone for release of payment during construction period of respective phases shall be as under:

a)	I (first) Payment Milestone	On achievement of 5% Physical Progress of respective phase
b)	II (second) Payment Milestone	On achievement of 10% Physical Progress of respective phase
c)	III (third) Payment Milestone	On achievement of 20% Physical Progress of respective phase
d)	IV (fourth) Payment Milestone	On achievement of 30% Physical Progress of respective phase
e)	V (fifth) Payment Milestone	On achievement of 40% Physical Progress of respective phase
f)	VI (sixth) Payment Milestone	On achievement of 50% Physical Progress of respective phase
g)	VII (seventh) Payment Milestone	On achievement of 60% Physical Progress of respective phase

⁵ Independent Engineer, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority responsible for making payments and recommended percentage physical progress achievements based on the above decided weightages for the entire construction period. The weightages shall be fixed as per format in Annexure – I of Schedule G of this Agreement.

h)	VIII (eighth) Payment Milestone	On achievement of 70% Physical Progress of respective phase
i)	IX (ninth) Payment Milestone	On achievement of 80% Physical Progress of respective phase
j)	X (tenth) Payment Milestone	On achievement of 90% Physical Progress of respective phase

Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.

23.5 Deleted.

23.6 Annuity Payments during Operation and Maintenance Period

23.6.1 The “Phase-1 Completion Cost” shall be the summation of A, B, C, D, E, F, G, H, I, J and K below:

- A. 5% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 5% Physical Progress of Phase-1.
- B. Another 5% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 10% Physical Progress of Phase-1.
- C. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 20% Physical Progress of Phase-1.
- D. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 30% Physical Progress of Phase-1.
- E. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 40% Physical Progress of Phase-1.
- F. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 50% Physical Progress of Phase-1 of Phase-1.
- G. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 60% Physical Progress of Phase-1.

- H. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 70% Physical Progress of Phase-1.
- I. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 80% Physical Progress of Phase-1.
- J. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress of Phase-1.
- K. Another 10% of the Phase-1 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the Phase-1 COD.

The Parties acknowledge and agree that the Authority has paid a portion of the Phase-1 Completion Cost as payments during Phase-1 Construction Period pursuant to Clause 23.4 of this Agreement. The balance Completion Cost remaining shall be due and payable during the Operation Period in accordance with the provisions of Clause 23.6.2.

The “Phase-2 Completion Cost” shall be the summation of payments L to U stated herein below:

- L. 5% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 5% Physical Progress of Phase-2.
- M. Another 5% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 10% Physical Progress of Phase-2.
- N. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 20% Physical Progress of Phase-2.
- O. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 30% Physical Progress of Phase-2.

- P. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 40% Physical Progress of Phase-2.
- Q. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 50% Physical Progress of Phase-2.
- R. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 60% Physical Progress of Phase-1.
- S. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 70% Physical Progress of Phase-2.
- T. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 80% Physical Progress of Phase-2.
- U. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress of Phase-2.
- V. Another 10% of the Phase-2 BPC adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the Phase-2 COD.

The Parties acknowledge and agree that the Authority has paid a portion of the Phase-2 Completion Cost as payments during Phase-2 Construction Period pursuant to Clause 23.4 of this Agreement. The balance Phase-2 Completion Cost remaining shall be due and payable during the period commencing from issuance of Completion Certificate till the Transfer Date in accordance with the provisions of Clause 23.6.2.

Further, the “Completion Cost” shall be summation of Phase-1 Completion Cost and Phase-2 Completion Cost.

23.6.2 The Phase-1 Completion Cost remaining to be paid in pursuance of the provisions of Clause 23.6.1 shall be due and payable in biannual Instillment over a period of 10 (ten) years commencing from Phase-1 COD and Phase-2 Completion Cost remaining to be paid in pursuance of the provisions of

Clause 23.6.1 shall be due and payable in biannual Instillments over a period of 10 (ten) years commencing from Project Completion Date in case of Project Phase-2 (the “**Annuity Payments**”).

The 1st (first) instalment of Annuity Payments for Phase-1 shall be due and payable within 15 (fifteen) days of the 180th(one hundred and eightieth) day of Phase-1 COD and the remaining instillments for Phase-1 shall be due and payable within 15 (fifteen) days of completion of each of the successive six months. The 1st (first) instalments of Annuity Payments for Phase-2 shall be due and payable within 15 (fifteen) days of the 180th(one hundred and eightieth) day of Project Completion Date and the remaining instalments shall be due and payable within 15 (fifteen) days of completion of each of the successive six months (“the **Annuity Payment Date**”). For the avoidance of doubt, the last Annuity Payment Date would be adjusted to in such a way that it falls at the end of the Operations Period.

23.6.3 Each of the Annuity Payments due and payable during the years following the COD shall be as under:

Phase-1 Annuity following the Phase-1 COD	Percentage of Phase-1 Completion Cost remaining to be paid on Phase-1 COD
1st Annuity	2.78%
2nd Annuity	2.94%
3rd Annuity	3.11%
4th Annuity	3.29%
5th Annuity	3.48%
6th Annuity	3.68%
7th Annuity	3.90%
8th Annuity	4.12%
9th Annuity	4.36%
10th Annuity	4.61%
11th Annuity	4.88%
12th Annuity	5.19%
13th Annuity	5.46%

Phase-1 Annuity following the Phase-1 COD	Percentage of Phase-1 Completion Cost remaining to be paid on Phase-1 COD
14th Annuity	5.78%
15th Annuity	6.11%
16th Annuity	6.47%
17th Annuity	6.84%
18th Annuity	7.24%
19th Annuity	7.66%
20th Annuity	8.10%

Phase-2 Annuity following the Project Completion Date	Percentage of Phase-2 Completion Cost remaining to be paid on Phase-2 COD
21st Annuity	2.78%
22nd Annuity	2.94%
23rd Annuity	3.11%
24th Annuity	3.29%
25th Annuity	3.48%
26th Annuity	3.68%
27th Annuity	3.90%
28th Annuity	4.12%
29th Annuity	4.36%
30th Annuity	4.61%
31th Annuity	4.88%
32th Annuity	5.19%
33th Annuity	5.46%
34th Annuity	5.78%
35th Annuity	6.11%
36th Annuity	6.47%
37th Annuity	6.84%
38th Annuity	7.24%

Phase-2 Annuity following the Project Completion Date	Percentage of Phase-2 Completion Cost remaining to be paid on Phase-2 COD
39th Annuity	7.66%
40th Annuity	8.10%

Each of the biannual instalments payable hereunder shall be paid along with interest as specified in Clause 23.6.4.

23.6.4 Interest shall be due and payable on the reducing balance of Phase-1 Completion Cost and Phase-2 Completion Cost at an interest rate equal to the average of one-year MCLR of top 5 Scheduled Commercial Banks⁶ plus 1.25%. Such interest shall be due and payable biannually along with each instalment specified in Clause 23.6.3.

For the avoidance of doubt and by way of illustration, the Parties agree that interest on the Phase-1 Completion Cost remaining to be paid, calculated from Phase-1 COD and until the 180th (one hundred and eightieth) day of Phase-1 COD, shall be due and payable to the Concessionaire along with the first Annuity Payment and interest on **7% (** per cent) of the Percentage of Phase-1 Completion Cost remaining to be paid on Phase-1 COD, calculated from first Annuity payment date and until the 1st (first) anniversary of COD, shall be due and payable along with the second Annuity Payment due and payable under this Agreement. The Parties further agree that interest shall be calculated based on the number of days a particular average of one-year MCLR of top 5 Scheduled Commercial Banks was applicable during the period of calculation.

For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs 100 crores on the 1st Annuity Payment Date, the applicable average of one year MCLR of top 5 Scheduled Commercial Banks for the first 75 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the 2nd Annuity Payment Date, the interest would be

⁶ The authority shall declare the list of Top 5 Scheduled Commercial Banks on 1st September every calendar year based on the balance sheet size as declared in their annual reports. The 1 year MCLR of the top 5 scheduled commercial banks shall be taken at the start of every quarter.

⁷ To be finalized on the basis of the outstanding Completion Cost Annuity pursuant to the payment of 1st Annuity as provided in the Annuity payment schedule in Clause 23.6.3

calculated as $((100*9.25%*75)/365)+((100*8.75%*105)/365)$. For the avoidance of doubt⁸, the Interest would be calculated on simple interest basis and no compounding of the same would be undertaken.

23.7 O&M Payments

23.7.1 The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof; For the performance of its Maintenance obligations, a lump sum financial support in the form of biannual payments shall be due and payable by the Authority.

- (a) The concessionaire shall be paid 0% of O&M Project Cost for the first year following the Project Completion Date; 0.3 % of O&M Project Cost each for the next five years, 0.6% of the O&M Project Cost each for the remaining years till the end of concession period.

The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt, it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under Article 16 of this Agreement.

23.7.2 Above amount for the performance of Contractors' Maintenance obligations shall be, inclusive of all taxes (except GST, which shall be payable at applicable rates). The amount payable for maintenance shall be adjusted on account of variation of Price Index. It is further agreed that the Bid Project Cost hereunder shall be reckoned with reference to the amount specified in Clause 23.1, which shall be adjusted to the extent of Change of Scope and Reduction in Scope, but shall not include any price adjustments in pursuance of variation of Price Index.

23.7.3 Deleted

23.8 Mobilization Advance

The Authority shall, on request of the Concessionaire, make an advance payment in a sum not exceeding 10% (ten per cent) of the Phase-1 BPC

⁸ Assuming that the total number of days between 1st Annuity payment date and 2nd Annuity date are 180. In case the number of days is different the calculation may be appropriately changed.

(the “Mobilization Advance”). This advance payment shall be made in two equal instalments. The Concessionaire may request the Authority for the first instalment of the advance payment at any time after the Appointed Date, along with furnishing Bank Guarantee (including e-Bank Guarantee) in a form satisfactory to the Authority. The Concessionaire may request the Authority for the second instalment of the advance payment at any time, after 60 (sixty) days from the Appointed Date, along with furnishing a Bank Guarantee (including e-Bank Guarantee) in a form satisfactory to the Authority. The first and second instalments of the Mobilization Advance shall be paid by the Authority within 30 (thirty) days of receipt of the respective requests in this behalf from the Concessionaire. The rate of interest on the Mobilization Advance shall be equal to the average of one-year MCLR of top 5 Scheduled Commercial Banks plus 1.25%, compounded annually. The Mobilization Advance shall be deducted by the Authority in 8 (eight) equal instalments from each of the payments to be made by the Authority to the Concessionaire in accordance with the provisions of Clause 23.4 and the interest thereon shall be recovered from the 9th (ninth) and 10th (tenth) instalments.

As the advance get recovered from the running bills/ stage payments, the Bank Guarantee (including e-Bank Guarantee) for the amount equivalent to the amount of advance recovered may be released on the request of the Concessionaire.

The Concessionaire would be at liberty to either submit a substitute Bank Guarantee (including e-Bank Guarantee) for the residual amount or multiple BGs for such residual amount in replacement of the existing Bank Guarantee (including e-Bank Guarantee).

23.9 Treatment of incomplete works

23.9.1 The Parties acknowledge and agree that in the event Phase-1 COD occurs upon issuance of a Phase-1 Provisional Certificate, the Annuity Payments towards Phase-1 and O&M Payments, if applicable, specified in this Article 23 shall be made as if all works comprising the Phase-1 of Project have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and

thereupon, the Completion Certificate shall be issued forthwith. The Parties further acknowledge and agree that in the event Phase-2 COD occurs upon issuance of a Phase-2 Provisional Certificate, the Annuity Payments towards Phase-2 and O&M Payments, if applicable, specified in this Article 23 shall be made as if all works comprising the Phase-1 of Project have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith

23.9.2 In the event the Authority determines that any incomplete works referred to in Clause 23.9.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 16 and the Phase Completion Cost, Completion Cost for respective Phase, Annuity Payments for respective Phase and O&M Payments shall be reduced on account of such Change of Scope as per the provisions of Article 16.

ARTICLE 24

DELETED

ARTICLE 25

ESCROW ACCOUNT

25.1 Escrow Account

25.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-O.

25.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) All funds constituting the Financial Package;
- (b) All revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) All payments by the Authority, after deduction of any outstanding payments.

25.3 Withdrawals during Concession Period

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

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;
- (c) All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (f) Any amounts due and payable to the Authority (other than under Clause 9.5);
- (g) Monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (i) Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) Any reserve requirements set forth in the Financing Agreements; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of the Authority.

25.4 Withdrawals upon Termination

25.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;
- (c) Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
- (d) Outstanding payments due to the Authority;
- (e) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (f) Retention and payments relating to the liability for defects and deficiencies set forth in Article 33;

- (g) Outstanding Debt Service including the balance of Debt Due;
- (h) Outstanding Subordinated Debt;
- (i) Incurred or accrued O&M Expenses;
- (j) Any other payments required to be made under this Agreement; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (k) of this Clause 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 32.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

ARTICLE 26

INSURANCE

26.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

26.2 Insurance Cover

Without prejudice to the provisions contained in Clause 26.1, the Concessionaire shall, procure and maintain Insurance Cover including but not limited to the following:

- (a) Construction All Risk insurance;
- (b) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (c) Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others who may enter the Site or the Port's Assets and caused by the Project;
- (d) Hull & Machinery Insurance for Marine Construction equipment; marine cum storage cum erection insurance;
- (e) The Concessionaire's general liability arising out of the Concession;
- (f) Liability to third parties for goods or property damage;

- (g) Workmen's compensation insurance;
- (h) Liability for breach of professional duty for design work;
- (i) Insurance required as per Motor Vehicles Act and insurance for land-based Construction equipment & other movable assets deployed for the Project; and
- (j) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (i) above.

26.3 Notices to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

26.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option

to either keep in force any such insurances, and pay such premier and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

26.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to 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.

26.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

26.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

ARTICLE 27

ACCOUNTS AND AUDIT

27.1 Audited accounts

27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

27.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project,] and such other information as the Authority may reasonably require.

27.2 Appointment of auditors

27.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-P. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

27.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

27.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

27.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

27.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 27.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

27.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V

FORCE MAJEURE AND TERMINATION

ARTICLE 28

FORCE MAJEURE

28.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) prevents the Affected Party from performing or discharging its obligations under this Agreement and thereby has Material Adverse Effect on the Affected Party.

28.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, 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 Site);
- (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) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) 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) exercise of any of its rights under this Agreement by the Authority;
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

28.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) Deleted
- (e) failure of the Authority to permit the Concessionaire to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

- (f) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) Any Indirect Political Event that causes a Non-Political Event; or
- (h) Any event or circumstances of a nature analogous to any of the foregoing.

28.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 35 and its effect, in financial terms, exceeds the sum specified in Clause 35.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) Any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

28.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
- (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) Any other information relevant to the Affected Party's claim.

28.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Concession

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 at any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before Phase-1 COD in case of Phase-1 or Phase-2 COD in case of Phase-2, as the case may be, the respective Phase Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) After Phase-1 COD in case of Phase-1 or Phase-2 COD in case of Phase-2, as the case may be, the Concessionaire shall be entitled to receive Annuity Payments for completed Phase(s) plus interest due and payable under this Agreement.
Provided any payment to be made under this clause shall be subject to deduction of outstanding dues of the Authority, if any.

28.7 Allocation of costs arising out of Force Majeure

28.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

28.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs

which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) day's time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

28.9 Termination Payment for Force Majeure Event

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to be calculated as under:

(i) Prior to Phase-1 COD:

Payment Milestone for Phase-1	Basis of calculation for termination payment
1st Payment Milestone	90% Phase-1 Debt Due or 0.62% of Phase-1 BPC, whichever is lower
2nd Payment Milestone	90% Phase-1 Debt Due or 0.1.24% of Phase-1 BPC, whichever is lower

Payment Milestone for Phase-1	Basis of calculation for termination payment
3 nd Payment Milestone	90% Phase-1 Debt Due or 4.95% of Phase-1 BPC, whichever is lower
4th Payment Milestone	90% Phase-1 Debt Due or 8.66% of Phase-1 BPC, whichever is lower
5th Payment Milestone	90% Phase-1 Debt Due or 12.38% of Phase-1 BPC, whichever is lower
6th Payment Milestone	90% Phase-1 Debt Due or 16.09% of Phase-1 BPC, whichever is lower
7th Payment Milestone	90% Phase-1 Debt Due or 19.80% of Phase-1 BPC, whichever is lower
8th Payment Milestone	90% Phase-1 Debt Due or 23.51% of Phase-1 BPC, whichever is lower
9th Payment Milestone	90% Phase-1 Debt Due or 27.23% of Phase-1 BPC, whichever is lower
10th Payment Milestone	90% Phase-1 Debt Due or 30.94% of Phase-1 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of termination payment, the milestone achieved would only be considered; provided further the above payment so calculated above shall be reduced by Insurance Cover.

(ii) Prior to Phase-2 COD but after Phase-1 COD:

The Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five percent) of Annuity Payments for Phase-1 remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date. Provided further the above payment so calculated above shall be reduced by Insurance Cover.

Additionally, the Authority shall make payment as under:-

Payment Milestone for Phase-2	Basis of calculation for termination payment
1st Payment Milestone	90% Phase-2 Debt Due or 0.62% of Phase-2 BPC, whichever is lower
2nd Payment Milestone	90% Phase-2 Debt Due or 0.124% of Phase-2 BPC, whichever is lower
3 rd Payment Milestone	90% Phase-2 Debt Due or 4.95% of Phase-2 BPC, whichever is lower
4th Payment Milestone	90% Phase-2 Debt Due or 8.66% of Phase-2 BPC, whichever is lower
5th Payment Milestone	90% Phase-2 Debt Due or 12.38% of Phase-2 BPC, whichever is lower
6th Payment Milestone	90% Phase-2 Debt Due or 16.09% of Phase-2 BPC, whichever is lower
7th Payment Milestone	90% Phase-2 Debt Due or 19.80% of Phase-2 BPC, whichever is lower
8th Payment Milestone	90% Phase-2 Debt Due or 23.51% of Phase-2 BPC, whichever is lower
9th Payment Milestone	90% Phase-2 Debt Due or 27.23% of Phase-2 BPC, whichever is lower
10th Payment Milestone	90% Phase-2 Debt Due or 30.94% of Phase-2 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of termination payment, the milestone achieved would only be considered; provided further the above payment so calculated above shall be reduced by Insurance Cover.

(iii) In case Termination occurs on or after Phase-2 COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five percent) of Annuity Payments for both, Phase-1 and Phase-2, remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.

Provided further the above payment so calculated above shall be reduced by Insurance Cover.

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (i) In case termination occurs prior to Phase-1 COD:
 - (a) Phase-1 Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Phase-1 Debt Due. Further the Phase-1 Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for Debt Due payment
1st Payment Milestone	Phase-1 Debt Due or 0.69% of Phase-1 BPC, whichever is lower
2nd Payment Milestone	Phase-1 Debt Due or 1.38% of Phase-1 BPC, whichever is lower
3 rd Payment Milestone	Phase-1 Debt Due or 5.50% of Phase-1 BPC, whichever is lower
4th Payment Milestone	Phase-1 Debt Due or 9.63% of Phase-1 BPC, whichever is lower
5th Payment Milestone	Phase-1 Debt Due or 13.75% of Phase-1 BPC, whichever is lower
6th Payment Milestone	Phase-1 Debt Due or 17.88% of Phase-1 BPC, whichever is lower
7th Payment Milestone	Phase-1 Debt Due or 22.00% of Phase-1 BPC, whichever is lower
8th Payment Milestone	Phase-1 Debt Due or 26.13% of Phase-1 BPC, whichever is lower
9th Payment Milestone	Phase-1 Debt Due or 30.25% of Phase-1 BPC, whichever is lower

Payment Milestone	Basis of calculation for Debt Due payment
10th Payment Milestone	Phase-1 Debt Due or 34.38% of Phase-1 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and

- (b) 110% (one hundred and ten per cent) of the Adjusted Equity towards funding of Phase-1;
- (ii) Prior to Phase-2 COD but after Phase-1 COD:
 - (a) Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of Annuity Payments for Phase-1 remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.
 - (b) Phase-2 Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for Debt Due payment
1st Payment Milestone	Phase-2 Debt Due or 0.69% of Phase-2 BPC, whichever is lower
2nd Payment Milestone	Phase-2 Debt Due or 1.38% of Phase-2 BPC, whichever is lower
3 rd Payment Milestone	Phase-2 Debt Due or 5.50% of Phase-2 BPC, whichever is lower
4th Payment Milestone	Phase-2 Debt Due or 9.63% of Phase-2 BPC, whichever is lower
5th Payment Milestone	Phase-2 Debt Due or 13.75% of Phase-2 BPC, whichever is lower

6th Payment Milestone	Phase-2 Debt Due or 17.88% of Phase-2 BPC, whichever is lower
7th Payment Milestone	Phase-2 Debt Due or 22.00% of Phase-2 BPC, whichever is lower
8th Payment Milestone	Phase-2 Debt Due or 26.13% of Phase-2 BPC, whichever is lower
9th Payment Milestone	Phase-2 Debt Due or 30.25% of Phase-2 BPC, whichever is lower
10th Payment Milestone	Phase-2 Debt Due or 34.38% of Phase-2 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and

- (c) 110% (one hundred and ten per cent) of the Adjusted Equity towards funding of Phase-2;
- (iii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of Annuity Payments for operational phase remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.

28.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 31.3.3 as if it were an Authority Default.

28.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

28.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

28.12 Deleted.

ARTICLE 29

COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 29.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

29.2 Compensation for default by the Authority

Subject to the provisions of Clause 29.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Annuity Payments, debt repayment obligations or other consequential losses, loss of profit, EPC Contractors claims, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

29.3 Deleted.

29.4 Mitigation of costs and damage

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

ARTICLE 30

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

30.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

30.2 Authority to act on behalf of Concessionaire

30.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 25.3.

30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses

respectively, the Authority or any other person authorized by it under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

30.3 Revocation of Suspension

30.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

30.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

30.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4,

the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 31 as if it is a Concessionaire Default under Clause 31.1.

30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 31

TERMINATION

31.1 Termination for Concessionaire Default

31.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) The Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Phase-1 COD or Phase-2 COD does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (I) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) Each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Concessionaire issues a Termination Notice in violation of this Agreement;
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.1.3.

31.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

31.2 Termination for Authority Default

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) The Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) The Authority fails to provide, within a period of 180 (one hundred and eighty days) from the Appointed Date, statutory clearances required for construction of the Project; or
- (d) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

31.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

31.3 Termination Payment

31.3.1 Upon Termination on account of a Concessionaire Default, Authority shall pay to the Concessionaire, by way of Termination Payment computed as follows:

(i) on or after Phase-1 COD but prior to Phase-2 COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to

- (a) 65% (sixty five per cent) of the sum of Annuity Payments for Phase-1 remaining unpaid for operational phase and in respect of the Concession Period, including interest thereon up to the Transfer Date.; and
- (b) the Termination Payment corresponding to the achieved Payment Milestone shall be as follows:

Payment Milestone	Basis of calculation for Termination Payment
1st Payment Milestone	NIL
2nd Payment Milestone	NIL
3rd Payment Milestone	50% of Phase-2 Debt Due or 2.75% of Phase-2 BPC, whichever is lower
4th Payment Milestone	55% of Phase-2 Debt Due or 5.30% of Phase-2 BPC, whichever is lower
5th Payment Milestone	60% of Phase-2 Debt Due or 8.25% of Phase-2 BPC , whichever is lower
6th Payment Milestone	65% of Phase-2 Debt Due or 11.62% of Phase-2 BPC, whichever is lower
7th Payment Milestone	70% of Phase-2 Debt Due or 15.40% of Phase-2 BPC, whichever is lower
8th Payment Milestone	75% of Phase-2 Debt Due or 19.60% of Phase-2 BPC, whichever is lower
9th Payment Milestone	80% of Phase-2 Debt Due or 24.20% of Phase-2 BPC, whichever is lower
10th Payment Milestone	85% of Phase-2 Debt Due or 29.22% of Phase-2 BPC, whichever is lower

(ii) on or after Phase-2 COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 65% (sixty five per cent) of the sum of Annuity Payments for Phase-1 and Phase-2 remaining unpaid for operational phase and in respect of the Concession Period, including interest thereon up to the Transfer Date.

31.3.2 Notwithstanding to the provisions of Clause 31.3.1 upon Termination on account of Concessionaire Default during the Phase-1 Construction Period, the Termination Payment shall be based on the Payment Milestone achieved which is in terms of the Physical Progress made by the

Concessionaire in the Project and the Termination Payment corresponding to the achieved Payment Milestone shall be as follows:

Payment Milestone	Basis of calculation for Termination Payment
1st Payment Milestone	NIL
2nd Payment Milestone	NIL
3rd Payment Milestone	50% of Phase-1 Debt Due or 2.75% of Phase-1 BPC, whichever is lower
4th Payment Milestone	55% of Phase-1 Debt Due or 5.30% of Phase-1 BPC, whichever is lower
5th Payment Milestone	60% of Phase-1 Debt Due or 8.25% of Phase-1 BPC, whichever is lower
6th Payment Milestone	65% of Phase-1 Debt Due or 11.62% of Phase-1 BPC, whichever is lower
7th Payment Milestone	70% of Phase-1 Debt Due or 15.40% of Phase-1 BPC, whichever is lower
8th Payment Milestone	75% of Phase-1 Debt Due or 19.60% of Phase-1 BPC, whichever is lower
9th Payment Milestone	80% of Phase-1 Debt Due or 24.20% of Phase-1 BPC, whichever is lower
10th Payment Milestone	85% of Phase-1 Debt Due or 29.22% of Phase-1 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.

31.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (i) In case the termination occurs prior to Phase-1 COD
 - (a) Phase-1 Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Phase-1 Debt Due. Further the Phase-1 Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for Debt Due payment
1 st Payment Milestone	Phase-1 Debt Due or 0.69% of Phase-1 BPC, whichever is lower
2 nd Payment Milestone	Phase-1 Debt Due or 1.38% of Phase-1 BPC, whichever is lower

3 rd Milestone	Payment	Phase-1 Debt Due or 5.50% of Phase-1 BPC, whichever is lower
4 th Milestone	Payment	Phase-1 Debt Due or 9.63% of Phase-1 BPC, whichever is lower
5 th Milestone	Payment	Phase-1 Debt Due or 13.75% of Phase-1 BPC, whichever is lower
6 th Milestone	Payment	Phase-1 Debt Due or 17.88% of Phase-1 BPC, whichever is lower
7 th Milestone	Payment	Phase-1 Debt Due or 22.00% of Phase-1 BPC, whichever is lower
8 th Milestone	Payment	Phase-1 Debt Due or 26.13% of Phase-1 BPC, whichever is lower
9 th Milestone	Payment	Phase-1 Debt Due or 30.25% of Phase-1 BPC, whichever is lower
10 th Milestone	Payment	Phase-1 Debt Due or 34.38% of Phase-1 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and

- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity towards funding of Phase-1;
- (ii) In case the termination occurs prior to Phase-2 COD but on or after Phase-1 COD
 - (a) the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments for Phase-1 remaining unpaid for operational phase and in respect of the Concession Period, including interest thereon up to the Transfer Date;
 - (b) Phase-2 Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Phase-2 Debt Due. Further the Phase-2 Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for Debt Due payment
1 st Payment Milestone	Phase-2 Debt Due or 0.69% of Phase-2 BPC, whichever is lower
2 nd Payment Milestone	Phase-2 Debt Due or 1.38% of Phase-2 BPC, whichever is lower
3 rd Milestone	Payment Phase-2 Debt Due or 5.50% of Phase-2 BPC, whichever is lower
4th Milestone	Payment Phase-2 Debt Due or 9.63% of Phase-2 BPC, whichever is lower

5th Milestone	Payment	Phase-2 Debt Due or 13.75% of Phase-2 BPC, whichever is lower
6th Milestone	Payment	Phase-2 Debt Due or 17.88% of Phase-2 BPC, whichever is lower
7th Milestone	Payment	Phase-2 Debt Due or 22.00% of Phase-2 BPC, whichever is lower
8th Milestone	Payment	Phase-2 Debt Due or 26.13% of Phase-2 BPC, whichever is lower
9th Milestone	Payment	Phase-2 Debt Due or 30.25% of Phase-2 BPC, whichever is lower
10th Milestone	Payment	Phase-2 Debt Due or 34.38% of Phase-2 BPC, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and

- (c) 150% (one hundred and fifty per cent) of the Adjusted Equity towards funding of Phase-2;
- (iii) In case the termination occurs on or after Phase-2 COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments for Phase-1 and Phase-2 remaining unpaid for operational phase and in respect of the Concession Period, including interest thereon up to the Transfer Date.

31.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the daily average Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Certain limitations on Termination Payment

31.4.1 During the Construction Period, Termination Payment due and payable under this Agreement shall be computed with reference to the Phase Debt Due in accordance with the provisions of this Agreement. The Parties also

agree that for the purposes of computing Termination Payment, the Debt Due for respective phase shall at no time exceed 85% (eighty five per cent) of the Total Project Cost apportioned in ratio of the Phase BPC to Bid Project Cost

31.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date on which the Agreement is terminated.

31.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) Require the Concessionaire to comply with the Divestment Requirements set forth in Clause 32.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being -due and owing

for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

31.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 32 DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

32.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

32.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

32.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

32.3 Cooperation and assistance on transfer of Project

32.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

32.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

32.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 32.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

32.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-Q (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

32.5 Divestment costs etc.

32.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

ARTICLE 33

DEFECTS LIABILITY AFTER TERMINATION

33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 180 (one hundred and eighty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 33.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 33 shall not apply if Termination occurs prior to Phase-1 COD.

33.2 Retention in Escrow Account

33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.2.3, a sum equal to 15% (fifteen per cent) of the Annuity Payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 33.1.

33.2.2 Without prejudice to the provisions of Clause 33.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 33.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid

120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

33.2.3 The Concessionaire may, for the performance of its obligations under this Article 33, provide to the Authority in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India), Account Payee Demand Draft, Fixed Deposit Receipt, Banker's cheque, or Bank Guarantee (including e-Bank Guarantee) for a sum equivalent to the amount determined under Clause 33.2.1 or 33.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 33.

Upon furnishing of a Performance Guarantee under this Clause 33.2.3, the retention of funds in the Escrow Account in terms of Clause 33.2.1 or 33.2.2, as the case may be, shall be dispensed with.

PART VI OTHER PROVISIONS

ARTICLE 34

ASSIGNMENT AND CHARGES

34.1 Restrictions on assignment and charges

34.1.1 Subject to Clauses 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

The restraints set forth in Clause 34.1 shall not apply to:

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

34.3 Substitution Agreement

34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-R.

34.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

34.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 35

CHANGE IN LAW

35.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs.19.72 Crores or 2% (two per cent) of the total Annuity Payments in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher Rs.19.72 Crores or 2% (two per cent) of the total Annuity Payments in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial

position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Clauses 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “**NPV**”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change

in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

35.5 Deleted.

ARTICLE 36 LIABILITY AND INDEMNITY

36.1 General indemnity

36.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the **“Authority Indemnified Persons”**) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User, or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

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

36.2 Indemnity by the Concessionaire

36.2.1 Without limiting the generality of Clause 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

36.2.2 Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the

Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

36.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand 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 or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

36.4 Defense of claims

36.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent

of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

36.4.2 If the Indemnifying Party has exercised its rights under Clause 36.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

36.4.3 If the Indemnifying Party exercises its rights under Clause 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) The employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- (b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (I) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 36.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct

the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

36.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

36.6 Survival on Termination

The provisions of this Article 36 shall survive Termination.

ARTICLE 37 RIGHTS AND TITLE OVER THE SITE

37.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

37.2 Access rights of the Authority and others

37.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority and/or its contractors, Senior Lenders, and the Independent Engineer, other users with existing access right in accordance with Clause 10.10, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

37.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

37.2.3 The Concessionaire shall allow free access to the Site to other users with existing access right to the Site in accordance with Clause 10.10 of the Agreement.

37.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such

stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand thereof.

37.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 38

DISPUTE RESOLUTION

38.1 Dispute Resolution

38.1.1 In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”), 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 through amicable settlement.

38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

38.1.3 Deleted.

38.2 Conciliation

If either the Authority or the Concessionaire is dissatisfied with any decision of the DRB, and/or if the DRB is unable to resolve the dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.

38.3 Arbitration

38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally settled by arbitration as set forth below:

- (i) The Dispute shall be referred to the Society for Affordable Redressal of Disputes - Ports (hereinafter called as SAROD - Ports). The dispute shall be dealt with in terms of Rules of SAROD - Ports. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD - Ports and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.
- (ii) The constitution of Arbitral Tribunal, code of conduct for Arbitrators and fees and expenses of SAROD - Ports and Arbitral Tribunal shall also be governed by the Rules of SAROD - Ports as amended from time to time. The rules of SAROD – Ports are placed at Schedule-S.
- (iii) The seat of Arbitration shall be Tuticorin , or a place selected by the Governing Body of SAROD - Ports and the language for all documents and communications between the parties shall be English.
- (iv) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

38.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 38 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

38.3.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

38.3.4 In the event that the Party against whom the Award has been granted, challenges the Award for any reason in a Court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim relief as per the provisions of the Arbitration and Conciliation Act or rules made thereunder. The Parties acknowledge and agree that the Arbitration proceedings shall be video recorded and one copy each of the video recording shall be provided to both the parties.

38.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

38.4 Adjudication by Adjudicatory Board

In the event of constitution of a statutory Adjudicatory Board or such other forum with powers to receive and adjudicate upon disputes between the Concessionaire and the Authority, all disputes not settled under Clause 38.2 through conciliation, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the parties in accordance with the applicable laws. For avoidance of doubt, parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the parties cannot refer the dispute, difference or controversy of whatsoever nature again under Clause 38.3 and the adjudication hereunder shall be final and binding.

ARTICLE 39

DISCLOSURE

39.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Site and the Concessionaire’s Registered Office. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

39.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

39.3 Notwithstanding the provisions of Clauses 39.1 and 39.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 39.1 and 39.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 40 REDRESSAL OF PUBLIC GRIEVANCES

40.1 Complaints Register

40.1.1 The Concessionaire shall maintain a public relations office at the Site where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each the Site so as to bring it to the attention of all Users.

40.1.2 The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

40.1.3 Without prejudice to the provisions of Clauses 40.1.1 and 40.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

40.2 Redressal of complaints

40.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressed of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

40.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the

opinion that the Complainant is entitled to further relief, the Authority may advise the Complainant to seek appropriate remedy under the Consumer Protection Act, 1986, at his own risk and cost.

ARTICLE 41

MISCELLANEOUS

41.1 Governing law and jurisdiction

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

41.2 Waiver of immunity

Each Party 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 Party 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 judgment 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 judgment that may be made or given in connection therewith).

41.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable

in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

41.4 Delayed payments

41.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the daily average Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

41.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

41.5 Waiver

41.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

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

41.5.2 Neither the failure by either 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 a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

41.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

41.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

41.8 Survival

41.8.1 Termination shall:

- (a) Not relieve the Concessionaire or the Authority, as the case may be, 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, 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.

41.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

41.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

41.10 Severability

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

41.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

41.12 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this

Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Concessionaire's Contractor.

41.13 Successors and assigns

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

41.14 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 Authority:

CHAIRMAN

V.O. Chidambaranar Port

Fax No: _____

Email: _____

The Concessionaire:

The CHAIRMAN & MANAGING DIRECTOR

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.

41.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

41.16 Counterparts

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

41.17 Deleted.

ARTICLE 42

DEFINITIONS

42.1 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:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Additional Performance Security” shall have the meaning as set forth in Clause 9.7;

“Adjusted Equity” in relation to a project phase means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before Project Completion Date, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the respective Project phase, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

“Affected Party” shall have the meaning as set forth in Clause 28.1;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Annuity Payments” shall have the meaning as set forth in Clause 23.6.2;

“Annuity Payment Date” shall have the meaning as set forth in Clause 23.6.2;

“Appendix” shall have the meaning as set forth in Clause 10.3.1;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance

and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Appointed Date” means the date on which Financial Close is achieved and every Condition Precedent is satisfied, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“Associate” or “Affiliate” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

“Authority” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Authority Default” shall have the meaning as set forth in Clause 31.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Clause 36.1.1;

“Authority Representative” means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank

acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

“Bid” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all pre-qualified bidders;

“Bid Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“Bid Project Cost” shall have the meaning as set forth in Clause 23.1;

“Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 15.1.1;

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

“Change in Law” means the occurrence of any of the following after the Bid Date:

- (a) The enactment of any new Indian law;
- (b) The repeal, modification or re-enactment of any existing Indian law;
- (c) The commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) Any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and six months thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period six months after Project Completion Date, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning as set forth in Clause 16.1.1;

“Company” means the company acting as the Concessionaire under this Agreement;

“Completion Certificate” shall have the meaning as set forth in Clause 14.2;

“Completion Cost” shall have the meaning as set forth in Clause 23.6.1

“Concession” shall have the meaning as set forth in Clause 3.1.1;

“Concessionaire” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Concession Period” means the period starting on and from Appointed Date and ending on the Transfer Date. For avoidance of doubt it is clarified that the Concession Period shall include the Construction Period plus a fixed period of 10 years of Operation & Maintenance Period from the Project Completion Date;

“Concessionaire Default” shall have the meaning as set forth in Clause 31.1.1;

“Conditions Precedent” shall have the meaning as set forth in Clause 4.1.1;

“Consortium” shall have the meaning as set forth in Recital (D);}

“Consortium Member” means a company specified in Recital (D) as a member of the Consortium;}

“Construction Laydown Area” means area for all temporary works including any temporary office area, sanitary area, equipment idling & maintenance area, temporary stockyards / godowns, barges and jetties and any such area required for construction activities during the development period;

“Construction Period” means the period beginning from the Appointed Date and ending on Project Completion Date;

“Construction Works” means all works and things necessary to complete the Project in accordance with this Agreement;

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) Not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“DBOT” or “Design, Build, Operate and Transfer” shall have the meaning as set forth in Recital (A);

“Damages” shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

provided further that Concessionaire may undertake and have separate Financing Agreements for Phase-1 and Phase-2 separately. The Debt Due, for the purpose of this Agreement be deemed to comprise of Phase-1 Debt Due and Phase-2 Debt Due, subject to conditions specified for Debt Due hereinabove. The Phase-1 Debt Due shall be aggregate of the sums outstanding on the Transfer Date as specified hereinabove towards financing of Phase-1 and not exceeding 75% of the overall Debt Due. For avoidance of doubt, in case Financing Agreement is signed for entire

Project, the Phase-1 Debt Due shall be deemed to be 75% of the Debt Due (the “**Phase-1 Debt Due**”)

The Phase-2 Debt Due shall be aggregate of the sums outstanding on the Transfer Date as specified hereinabove towards financing of Phase-2 and not exceeding 25% of the overall Debt Due. For avoidance of doubt, in case Financing Agreement is signed for entire Project, the Phase-2 Debt Due shall be deemed to be 25% of the Debt Due (the “**Phase-2 Debt Due**”)

“**Debt Service**” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“**Development Period**” means the period from the date of this Agreement until the Appointed Date;

“**Disposal Site**” shall have the meaning as set forth in Schedule A;

“**Dispute**” shall have the meaning as set forth in Clause 38.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 38;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 32.1;

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmers, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“**Dredging Policy**” means A. Dredging Guidelines for Major Ports, 2021 and subsequent amendments

“**EPC Contract**” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project and/or dredging /reclamation works in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project, any encumbrances 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

“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 for the purposes of this Agreement 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;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning as set forth in Clause 25.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 25.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule-O;

“Estimated Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal Volume –I – Instructions to Bidders.

“Estimated Phase-1 Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal Volume –I – Instructions to Bidders

“Estimated Phase-2 Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal Volume –I – Instructions to Bidders

“Financial Close” means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the Lender’s Representative to the Authority in writing. Such communication from Lender’s Representative shall be treated as date on which the Financial Close is achieved;

“Financial Default” shall have the meaning as set forth in Schedule-R;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

“Government” means the Government of the India;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 36;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 36;

“Independent Engineer” shall have the meaning as set forth in Clause 21.1;

“Indirect Political Event” shall have the meaning as set forth in Clause 28.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and includes all insurances required to be taken out by the Concessionaire under Clause 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“LOA” or “Letter of Award” means the letter of award referred to in Recital(D);

“Lead Member” shall have the meaning set forth in Recital (D)

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Licensed Premises” shall have the meaning as set forth in Clause 10.2.2;

“MoPSW” means the Ministry of Ports, Shipping and Waterways or any substitute thereof dealing with ports;

“Maintenance Manual” shall have the meaning as set forth in Clause 17.3.1;

“Maintenance Program” shall have the meaning as set forth in Clause 17.4.1;

“Maintenance Requirements” shall have the meaning as set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning as set forth in Clause 28.2;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities, in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premier for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Clause 19.2;

“O&M Payments” shall have the meaning as set forth in Clause 23.7.1;

“Operation Period” means the operation and maintenance period of 10 (ten) years commencing from COD of the respective phase and ending on the Transfer Date;

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

“Payment Milestone” shall have the meaning as set forth in Clause 23.4;

“Performance Guarantee” shall have the meaning as set forth in Clause 33.2.3;

“Performance Security” shall have the meaning as set forth in Clause 9.1.1;

“Phase-1 BPC” shall have the meaning as set forth in Clause 23.1;

“Phase-1 COD” or “Phase-1 Commercial Operation Date” shall have the meaning as set forth in Clause 15.1.1

“Phase-2 BPC” shall have the meaning as set forth in Clause 23.1;

“Phase-2 COD” or “Phase-2 Commercial Operation Date” shall have the meaning as set forth in Clause 15.1.1<>

“Phase-1 Construction Period” shall be the period commencing from Appointed Date till Phase-1 COD;

“Phase-2 Construction Period” shall be the period commencing from Phase-1 COD till Project Completion Date;

“Phase-1 Completion Certificate” shall have the meaning as set forth in Clause 14.2;

“Phase-2 Completion Certificate” shall have the meaning as set forth in Clause 14.2;

“Phase-1 Completion Cost” shall have the meaning as set forth in Clause 23.6.1;

“Phase-2 Completion Cost” shall have the meaning as set forth in Clause 23.6.1;

“Phase-1 Debt Due” shall have the meaning set forth in definition of Debt Due;

“Phase-2 Debt Due” shall have the meaning set forth in definition of Debt Due;

“Phase-1 Provisional Completion Certificate” shall have the meaning as set forth in Clause 14.3;

“Phase-2 Provisional Completion Certificate” shall have the meaning as set forth in Clause 14.3;

“Phase-1 Scheduled Completion Date” shall have the meaning as set forth in Clause 12.3.1;

“Phase-2 Scheduled Completion Date” shall have the meaning as set forth in Clause 12.3.1;

“Physical Progress” shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the

assessment done by the Independent Engineer in accordance with Clause 23.4 of this Agreement.

“Phase Physical Progress” shall mean the physical construction of the respective phase of Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Engineer in accordance with Clause 23.4 of this Agreement.

“Political Event” shall have the meaning as set forth in Clause 28.4;

“Port” means the area set forth in Master Plan set out in Schedule A;

“Port Assets” means the assets belonging to the Authority at Port and within Port Limits;

“Port Limits” means a limit as declared under the Gazette Notification By MOSPW, that the VOCPA shall be a major port.

“Price Index” shall comprise:

- (a) 70% (seventy per cent) of WPI; and
- (b) 30% (thirty per cent) of CPI (IW),

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

“Price Index Multiple” shall have the meaning set forth in 23.2.3;

“Project” means the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project in Site comprising the **Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port** and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution

Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs.25 crore (twenty five crore)⁹;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, protection bunds, navigation area and approach channel, electrical systems, communication systems and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Date” shall have the meaning as set forth in Clause 14.2;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-G for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Project Milestones” means the project milestones as set forth in Schedule-G;

“Project Phase-1” means the development of the area demarcated in the Schedule-A under the phase-1 in accordance with this Agreement.

“Project Phase-2” means the development of the area demarcated in the Schedule-A under the phase-2 in accordance with this Agreement.

“Project Phase(s)” means collective reference to Project Phase-1 and Project Phase-2;

“Protected Areas” shall have the meaning as set forth in Schedule A;

“Provisional Certificate” shall have the meaning as set forth in Clause 14.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3.1 and, if applicable, shall only include any or all of the below:

⁹This may be fixed at the higher of: (a) 2% (two per cent) of Total Project Cost and (b) Rs. 25 (twenty five) crore.

- (i) pending works deemed by minor by Independent Engineer not relating Health & Safety, Environmental Compliance, Applicable Permits;
- (ii) not exceeding 10% of the reclaimed area for the respective phase, excluding the protection wall and design slopes of the Shore protection bund;
- (iii) [•]

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

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

“Reference Drawing” shall have the meaning as set forth in Clause 12.2.1;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Reference Index Date” means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

“Request for Proposals” or **“RFP”** shall have the meaning as set forth in Recital (B);

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“Safety Consultant” shall have the meaning as set forth in Clause 18.1.2;

“**Safety Requirements**” shall have the meaning as set forth in Clause 18.1.1;

“**Scheduled Completion Date**” shall have the meaning as set forth in Clause 12.3.1;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

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

“**Site**” shall have the meaning as set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**State**” means the State of **Tamilnadu** And “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

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

“Substitution Agreement” shall have the meaning as set forth in Clause 34.3.1;

“Supporting Project Infrastructure” means the supporting project facilities and services mentioned in Schedule T to be provided by the Authority.

“Suspension” shall have the meaning as set forth in Clause 30.1;

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

“Termination” means the expiry or termination of this Agreement and the Concession hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“Tests” means the tests set forth in Schedule-I to determine the completion of the Project in accordance with the provisions of this Agreement;

“Total Project Cost” means 40 % (forty percent) of the Bid Project Cost specified in Clause 23.1;

provided that in the event WPI increases, on an average, by more than 3% (three per cent) per annum for the period between the Bid Date and COD, the amount hereinbefore specified shall be increased such that the effect of increase in WPI, in excess of such 3% (three per cent), is reflected in the Total Project Cost;

provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Debt Due, as the case may be, in accordance with the provisions of this Agreement;

Provided also that the Total Project Cost shall not exceed 55% of the actual capital expenditure on the Project and capitalized in the books of accounts of the Concessionaire as certified by the Statutory Auditor;

“Transfer Date” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“User” means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning as set forth in Clause 32.4; and

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

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED
THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE
WRITTEN.**

<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>	<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ____ day of 2026 hereunto affixed in the presence of ____ Director, who has signed these</p> <p>Presents in token thereof and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>
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In the presence of:

1.

2.

Schedules

SCHEDULE – A

SITE OF THE PROJECT

Introduction

This chapter lays the foundation for the study by outlining the project's background, needs, and objectives. By offering this structured background, the chapter aims to ensure a clear understanding of the study's framework and its relevance to the broader field of inquiry.

Project Background

V.O. Chidambaranar Port (VOC Port), a major port in India and the second largest in Tamil Nadu, serves as a key gateway for cargo and transshipment in southern India. With an all-weather natural harbour, the port has experienced steady growth in cargo traffic over recent years, reflecting its increasing strategic importance in regional trade.

To address rising demand and enhance operational efficiency, VOC Port Authority (VOCPA) has planned significant infrastructure improvements. These include the development of an Outer Harbour with multi-berth Container terminals and the deepening of the Inner Harbour basin and approach channel to accommodate larger vessels. These initiatives aim to increase cargo-handling capacity, support larger vessel operations, and enhance the port's position as a transshipment and cargo hub.

The planned projects are aligned with VOCPA's long-term vision to enhance throughput, improve competitiveness, and enable sustainable growth. Detailed feasibility studies and engineering assessments will guide the design and implementation of these critical infrastructure developments, ensuring technical, financial, operational, and environmental viability.

Therefore, the authority has issued an RFP for 'Consultancy services for Preparation of Detailed Project Reports for Deepening the Inner Harbour basin and Development of Outer Harbour at VOC Port, Tuticorin'. The project's scope includes a comprehensive market and traffic assessment, as well as a structured financial viability analysis for the proposed designs, ensuring that the proposed infrastructure developments are both technically and financially sound. This report is focused on the assessment of the Outer Harbour at the VOC Port.

Need for the Project

The rapid growth in cargo traffic at VOC Port has created a pressing need to expand its handling capacity and accommodate larger vessels. Existing infrastructure constraints in the Inner Harbour limit operational efficiency and restrict the port's ability to serve as a regional transshipment hub. The development of an Outer Harbour with multi-berth Container terminals is essential to meet rising

demand, improve vessel turnaround times, and strengthen VOCPA's competitiveness.

The Outer Harbour development, approved by the Government in February 2024, aims to construct breakwaters, carry out dredging and reclamation, build multi-berth terminals, and mechanize port operations with O&M arrangements for 45 years. Despite the preparation of the DPR by NTCPW, IITM, Chennai, and two tender attempts, there was no response, highlighting the need to restructure the project to make it more viable and attractive to investors.

Simultaneously, the Inner Harbour basin and approach channel require deepening to accommodate larger vessels and improve turnaround times. The project, therefore, necessitates comprehensive feasibility studies, market and traffic assessments, and financial viability analysis to ensure that both the Outer Harbour and Inner Harbour improvements are technically sound, economically feasible, and aligned with VOCPA's strategic objective of strengthening its position as a regional transshipment and cargo hub.

Port location and port boundaries

V O Chidambaranar Port (formerly known as Tuticorin Port) is one of the major ports of India, located at South-Eastern coast of India at latitude of 8°45'N and longitude 78°13'E. The VOC Port, one of the twelve (12) major ports in India, is an artificial, deep-water port on the East coast of India in Tuticorin it is also a fast growing and efficient major port in calm waters that makes it operational throughout the year.

The Google imagery of geographic location of VOC port is presented in the following Figure 2.1.

Tuticorin, also known as Thoothukudi, is a port and industrial city in the Thoothukudi district of Tamil Nadu, India. It is a Municipal Corporation located on the Coromandel Coast along the Bay of Bengal, near the Palk Strait and within the Gulf of Mannar, at the southern tip of India. The city is strategically positioned about 160 km north of Kanyakumari and around 129 nautical miles from the western international sea route, just 20 hours from the East-West trade corridor.

Large areas of dry, non-agricultural land are available around the city, offering scope for industrial development and urban expansion. The region already hosts a mix of large, medium, and small industries. Additionally, the surrounding hinterland has strong potential for eco-tourism, heritage tourism, and leisure activities.

Figure 2.1: Geographic location of Tuticorin Port



Port Connectivity - Hinterland Connectivity

Cargo movement at VOC Port is supported by multiple modes of transportation. Road connectivity is ensured through major national highways such as NH 38, NH 32, and NH 44, along with a network of regional roads, providing efficient access to inland destinations. Rail transport plays a crucial role in handling bulk cargo, particularly coal and other industrial commodities. Additionally, the port's strategic location along international shipping routes establishes it as a key hub for both coastal and global maritime trade.

VOC Port currently handles imported commodities through four primary transportation modes — road, conveyor, rail, and pipeline. Based on the latest modal share data, road transport dominates with approximately 67% of the total cargo movement, followed by conveyor systems at 24%. Rail transport accounts for about 5%, while pipelines remain the least utilized mode, contributing only 4% of the total cargo volume. Modal share cargo transport at VOC Port during 2024-25 is presented in DPR.

Industrial Corridors in the Hinterland

Tamil Nadu is a leading hub for industrial development in India, supported by several major industrial corridors that drive economic growth and enhance regional connectivity. The Chennai–Bengaluru Industrial Corridor (CBIC) serves as a key infrastructure initiative promoting industrial integration between Tamil Nadu and Karnataka. The corridor aims to strengthen manufacturing, logistics, and trade linkages across major industrial clusters in Tamil Nadu, Karnataka, and Andhra Pradesh, thereby fostering balanced regional development and economic diversification.

The CBIC plays a pivotal role in connecting inland industrial hubs to major ports, facilitating both domestic and international trade. Currently, VOC Port (Tuticorin) functions as one of the principal maritime gateways in South India. Although its connectivity to the CBIC is less direct compared to Chennai and Ennore Ports, several industries located along the corridor—particularly in Hosur, Sriperumbudur, and Ranipet—are exploring alternative port options to alleviate congestion at Chennai Port. With its deep draft, modern container handling facilities, and ongoing expansion initiatives, VOC Port offers a viable and efficient alternative for cargo movement from these industrial clusters.

The East Coast Economic Corridor (ECEC), encompassing the Chennai–Kanyakumari Industrial Corridor (CKIC), focuses on leveraging Tamil Nadu's extensive coastline to promote export-oriented industrialization. Complementing these corridors, the Western and Eastern Dedicated Freight Corridors (DFC) are set to further enhance the movement of goods within the state and across India.

A key feature of the CKIC is its potential to significantly strengthen connectivity with VOC Port, Tuticorin. As a major maritime gateway in southern India, the port handles a substantial share of domestic and international cargo, serving industries across the southern states. The development of the CKIC will provide industries with improved access to VOC Port, leading to reduced transportation costs, shorter transit times, and enhanced overall logistics efficiency.

Major Road Connectivity

The V.O. Chidambaranar (VOC) Port, located in Tuticorin, Tamil Nadu, is a critical hub for maritime trade in South India. Its strategic road connectivity ensures seamless cargo movement to various parts of the country. The port is well-integrated with key National Highways (NH), including NH 38, NH 138, NH 44, and NH 32. Below is a detailed analysis of its road connectivity and associated benefits.

National Highways

National Highway 38 (formerly NH 7A)

NH 38 connects VOC Port to Tiruchirappalli and central Tamil Nadu, playing a key role in supporting regional trade and logistics. The highway intersects major routes such as NH 44 and NH 32, enhancing connectivity to northern Tamil Nadu and

neighbouring states. Recent upgrades, including lane expansions and improved road surfaces, have increased capacity to accommodate growing traffic volumes from the port, improving cargo movement efficiency.

National Highway 138 (formerly NH 45B)

NH 138 links Tuticorin Port with Tirunelveli, facilitating the transport of goods across southern Tamil Nadu and beyond. Serving as a feeder to NH 44, it provides critical long-distance connectivity. Ongoing upgrades, including a four-lane expansion, aim to enhance capacity, reduce congestion, and improve the efficiency of cargo transportation, thereby supporting economic activities associated with VOC Port.

National Highway 44

As India's longest national highway, NH 44 connects VOC Port to major cities such as Madurai, Bengaluru, and Delhi, enabling efficient long-distance trade and cargo movement. The highway has been upgraded with multiple lanes and modern infrastructure, supporting high-speed traffic, reducing transit times, and enhancing safety. Its integration with other highways, including NH 138 and NH 32, strengthens both regional and national connectivity, driving economic growth.

a) National Highway 32

NH 32 connects VOC Port to Chennai, facilitating trade between Tuticorin and Chennai Ports and ensuring smooth movement of goods along Tamil Nadu's eastern coastline. The highway links key industrial and agricultural hubs and integrates with other major routes for broader regional access. Ongoing infrastructure improvements, including bypasses and lane expansions, aim to reduce congestion, enhance capacity, and reinforce the highway's role in supporting regional economic development.

State Highways

State highways play a vital role in complementing the national highway network and ensuring seamless connectivity to V.O. Chidambaranar (VOC) Port. These state-managed corridors provide crucial last-mile links connecting the port with major industrial zones, agricultural markets, and smaller towns across Tamil Nadu.

Key routes such as SH-49 (East Coast Road) facilitate efficient movement of goods along the coastal belt, supporting industries like fisheries, salt production, and agro-based processing. Similarly, SH-176 serves as an important corridor connecting VOC Port with key hinterland destinations, enabling smooth cargo movement to nearby districts. Other significant state highways link the port to major urban and industrial centres, including Tirunelveli, Kovilpatti, and Rajapalayam, thereby supporting the transport of bulk commodities such as fertilizers, cement, and petrochemical products.

Harbour Extension Road

The Harbour Extension Road at VOC Port serves as a critical linkage between NH-138, which connects the port to Tirunelveli, and NH-38, which provides access to Madurai and other key industrial hubs in Tamil Nadu. Additionally, this corridor connects SH-176 with NH-138, extending further to Tiruchendur. This strategic roadway plays an essential role in enhancing the efficiency of cargo movement,

strengthening port–hinterland connectivity, and stimulating regional economic growth.

Enhanced Accessibility

The integration of NH-38, NH-138, NH-44, and NH-32 forms a robust multimodal transport network connecting VOC Port to southern, central, and northern India. These highways facilitate efficient cargo transportation and minimize transit times. The network provides access to major hinterland regions such as the agricultural zones of Thanjavur, industrial clusters of Coimbatore, and textile hubs of Tirupur. It also ensures smooth connectivity with neighbouring states — Kerala, Karnataka, and Andhra Pradesh — strengthening VOC Port's position as a preferred gateway for exporters and importers.

The road network is further complemented by strong rail connectivity, supporting multimodal transport solutions that improve logistics efficiency and reduce overall transportation costs. Integration with logistics parks, industrial estates, and inland container depots (ICDs) ensures streamlined cargo aggregation and distribution. Major road connectivity to VOC Port is presented in Figure 2.2 below.

Figure 2.2: Major Road Connectivity to VOC Port (Source Master Plan 2047)



Ongoing and Future Developments

Several infrastructure initiatives are underway to enhance highway connectivity to VOC Port. Proposed bypasses on NH-138 and NH-32 aim to decongest urban areas in Tuticorin and provide direct port access. The upgradation of NH-38 to six

lanes along specific stretches will significantly improve capacity for heavy vehicle traffic.

Ongoing and planned projects, including highway expansions and improved intermodal linkages, are expected to further strengthen VOC Port's accessibility. These developments will reinforce its role as a major logistics hub in southern India, enhancing its competitiveness in both domestic and international trade.

Railway Line Connectivity

VOC Port is linked to the Indian Railways network via a broad-gauge single railway line starting from Milavattan Railway Station, providing an important route for cargo transport. This line helps handle bulk and containerized cargo efficiently and reduces reliance on road transport. Rail connectivity to VOC Port shown in Figure 2.5 above (Source: Master Plan 2047). For further details please refer Detailed Project Report.

Annex-I Engineering Surveys and Investigation Bathymetry

Comprehensive bathymetry surveys have been conducted by VOC Port through NISVO MARINE SURVEYS LLP (NMSL) during February 2025 to June 2025. Bathymetric survey in the inner harbour basin and outer area has been carried out using suitable Multi beam survey grade echosounder.

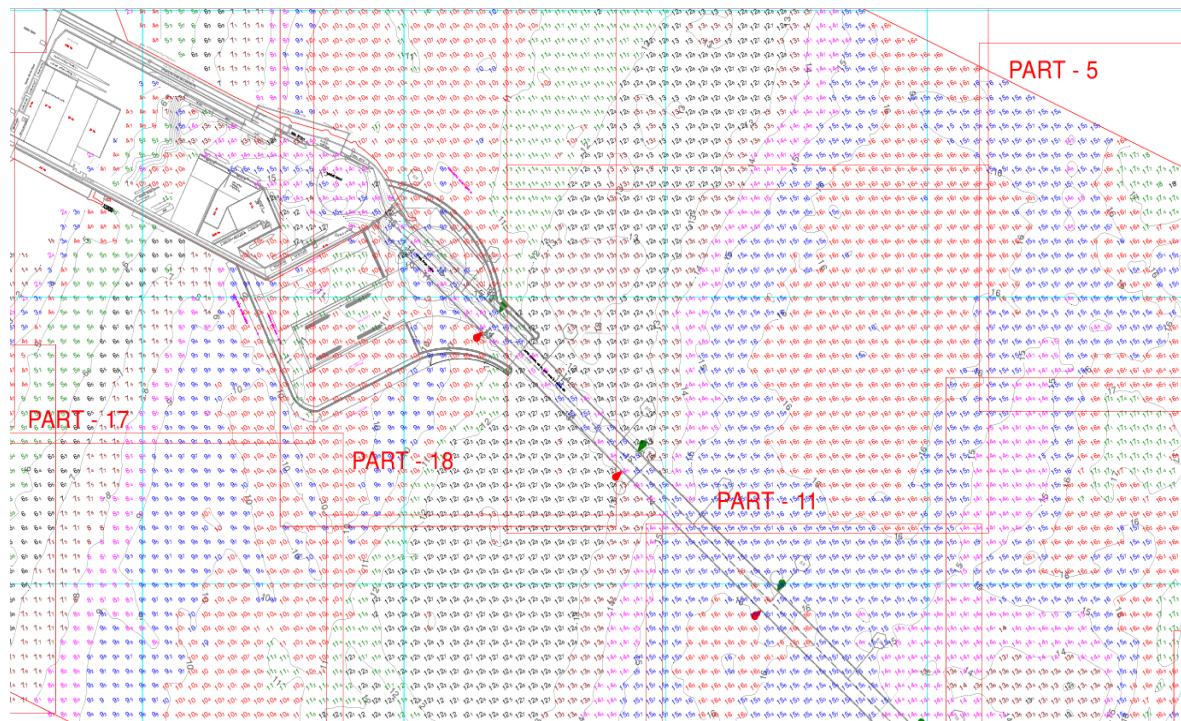
The survey area and the bathymetry are shown in Figure 2.3 and Figure 2.4 respectively.

The bathymetry survey revealed that the slope from the port towards the open sea is approximately 1:1000 on both side of the navigation channel. This indicates a very gentle slope of the seabed gradient extending seawards. In general, the contours observed in the survey area are parallel to the coast. The bathymetry charts as shown below, produced by NMSL was used to develop the Outer harbour Layout. From the figure it can also be seen that the water depth at the outer harbour location varies from -9m CD to -12m CD. 20m water depths are available approximately 10km from the existing Port entrance.

Figure 2.3 Boundaries of Bathymetric Survey



Fig 2.4 – Bathymetry (2025)



The soil investigations results of the Horizon Science (2022) is mostly correlating with the outcome of the previous studies performed. [Link](#)

Oceanographic Conditions

Tides

The tide range at Tuticorin relative to the Chart Datum (CD) is as follows:

a) Lowest Low Water Level (LLWL)	+ 0.11 m
b) Mean Lower Low Water Springs (MLLWS)	+ 0.25 m
c) Mean Low Water Springs (MLWS)	+ 0.29 m
d) Mean Low Water Neaps (MLWN)	+ 0.55 m
e) Mean Sea Level (MSL)	+ 0.64 m
f) Mean High Water Neaps (MHWN)	+ 0.71 m
g) Mean High Water Springs (MHWS)	+ 0.99 m
h) Highest High-Water Level (HHWL)	+ 1.26 m

The above levels are with respect to chart datum, which is approximately the level of Lowest Astronomical Tide.

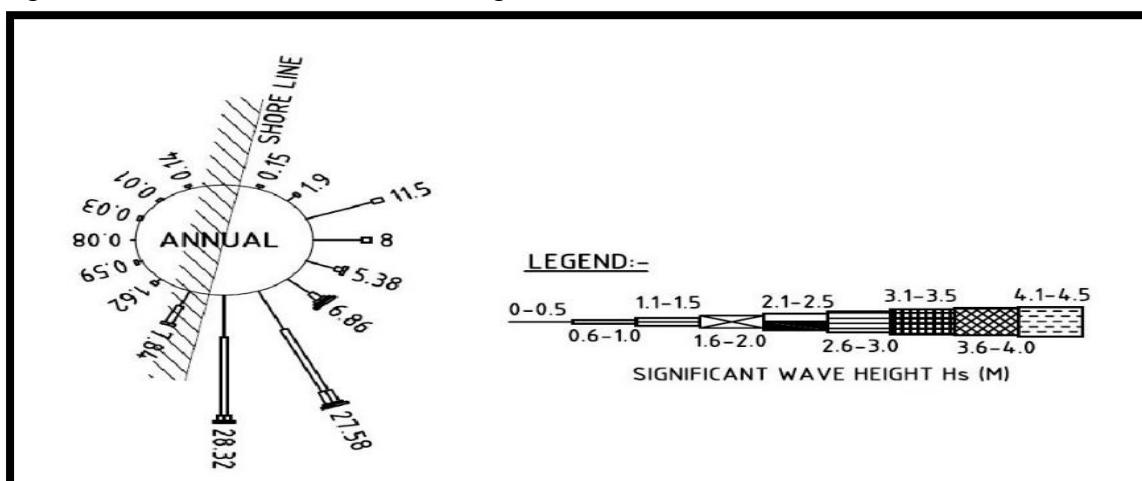
Waves

Wave data for V.O. Chidambaranar Port (VOCPA) have been obtained from the National Institute of Oceanography (NIO) under the National Data Buoy Programme (NDBP). Observations indicate that peak wave heights occur predominantly during mid-May to August, reaching up to 2.20 m, and around 1.50 m during December.

The peak wave period is approximately 9 seconds, with waves generally approaching from the south of southeast direction. Peak wave heights of about 1.75 m and 2.25 m are observed when waves approach from the east and south, respectively.

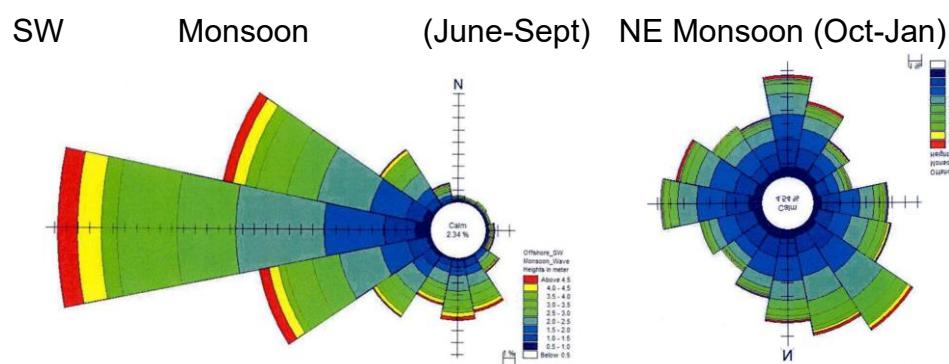
The annual wave rose diagram illustrating wave approach directions and frequency distribution is presented in Figure 2.5. These wave patterns are crucial for port operations, influencing navigation, berthing, and cargo handling procedures. The annual wave rose diagram, provides a comprehensive visual representation of these wave characteristics, aiding in the strategic planning and operational efficiency of the port.

Figure 2.5: Annual Wave Rose Diagram

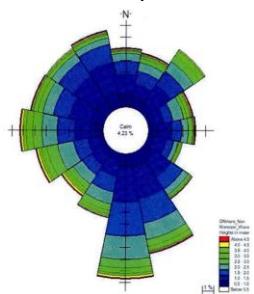


Central Water and Power Research Station (CWPRS), Pune has conducted wave tranquillity studies for the proposed development of outer harbour at VOC Port in 2018. offshore wave data as reported by India Meteorological Department (IMO) observed from ships plying in deep water off Tuticorin in the region of grid between 75°E to 80°E Longitude and 5°N to 10°N Latitude were used for the studies. The frequency distribution of Wave heights from different directions during different seasons and entire year based on the above-mentioned offshore data corresponding offshore wave rose diagram are presented in Figure 2.6 below.

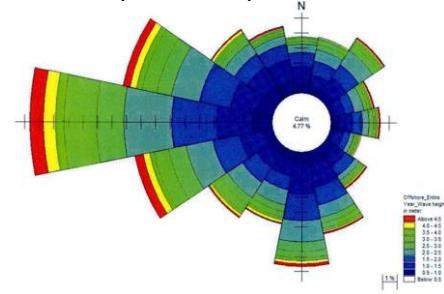
Figure 2.6 Offshore Wave Rose diagram for different seasons



Non Monsoon (Feb – May)



Annual (Jan-Dec)



Currents

North/ South current is created at the approach channel of range 0.5 – 1.0 Knots due to seasonal wind. The current direction is southwards during Dec – Mar, East – Northeast during May – Sep. During monsoon predominant direction is SSE (South Southeast) to SSW (South Southwest) for NE monsoon. The current magnitude ranges around 0.5 – 1.0 Knot most of the time during NE monsoon. During SW monsoon the directions are wider with magnitude of 0.5 Knots and less for most of the period.

Cyclones

Cyclone might occur during NE monsoon at Tuticorin. Tuticorin is not a frequent cyclone prone area. Even then on Nov 13th, 1992, at 1610 IST the port was hit directly by a cyclone with 113Kmph from ESE direction. In Dec 2000 port experienced shadow effects of the cyclone that passed nearby Tuticorin. NIOT managed to record a maximum wave height of 3 m off Tuticorin during this cyclone.

In 2015, Central Water and Power Research Station (CWPRS), Pune has conducted storm wave hindcasting studies and corresponding extreme wave analysis for the proposed development of outer harbour at VOC Port. Storm wave Hindcasting and extreme wave analysis of 1891 - 2010 (120 years) storm data indicated that the storm wave value of 8.5 m, 6.5 m, and 5.6 m with 200 - year, 100 - year 50-year return period respectively off Tuticorin Coast at 30m water depths. These parameters would be useful for evolving the design of breakwater for the proposed development of Outer harbour.

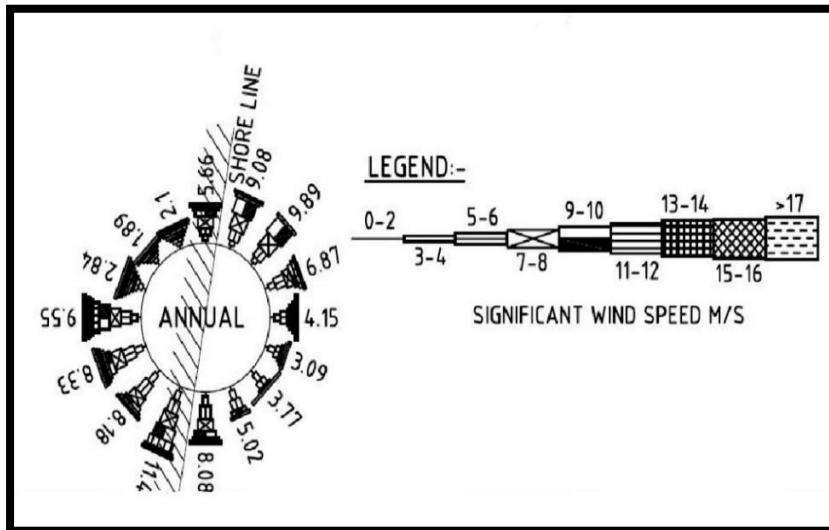
Meteorological Conditions

Meteorological conditions at Tuticorin region are presented in following:

Winds

The governing wind direction in India is NE and SW influenced by monsoon. Monsoonal winds occur from WNW – WSW during May to August and N – ENE during November to February in this region. Prevailing winds was high during 1966 i.e. 47 days with wind speed of 40 kmph.

Figure 2.7 : Annual Wind rose Diagram



Rainfall

The Tuticorin area is in the rain shadow region created by the Western Ghats of the west. The average annual rainfall in the Tuticorin district is 790.2 mm. The main rainy season for the Tuticorin is from October to December. The region gets minimal rain fall during the southwest monsoon. More than 70% of rainfall in the site occurs during the month of October to December.

Southwest Monsoon (Jun-13 to Sep-13)		Northeast Monsoon (Oct-13 to Dec-13)		Winter Season (Jan-14 to Feb-14)		Hot Weather Season (Mar-14 to May-14)		Annual Total (Jun-13 to May-14)	
Actual	Normal	Actual	Normal	Actual	Normal	Actual	Normal	Actual	Normal
13.8	74.9	301.6	427.0	31.4	42.8	159.4	111.6	506.2	656.3

Air Temperature

The mean daily maximum and minimum temperature were observed to be 39.8° C and 22.4° C respectively in the year 2014-15. Generally, the maximum temperature at Tuticorin ranges between 41.1° and 33.3° C, while minimum temperature varies between 21.3° to 15.3° C.

Months	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15
Max	39.8	39.1	37.1	38.1	37	32.3	32.1	30.9	32	33.6	33.1	35.5
Min	28.4	28.4	27.4	25.4	24.2	23.5	23.5	22.4	23	25	24.1	23.8

Visibility

Generally, the visibility is comprehensible; visibility in the monsoon normally deteriorates during rains and occasional squalls. Visibility data are recorded at Tuticorin daily and observation records are available since 1961-1990. Analysis of

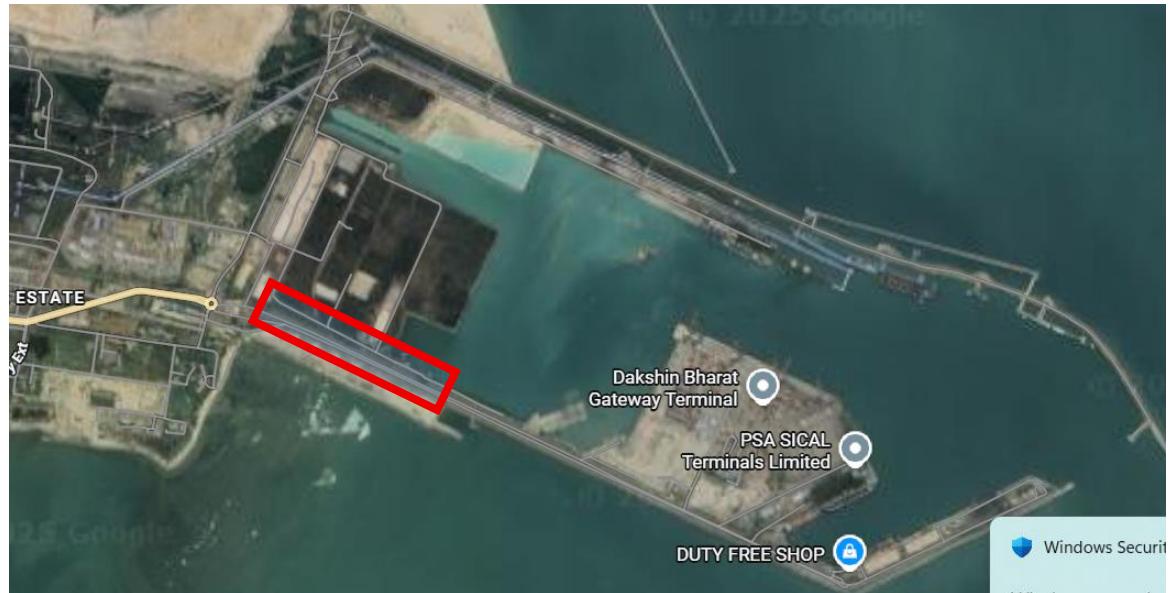
the average visibility ratio for every month is carried out based on I.M.D. maintained data for a period of 30 years. Around the year more than 84% of the days the visibility is explicit even over 20 km. On an average only one day over the years is visible up to 4 km and around 5 days up to 10 km.

Humidity

The average humidity ranges from nearly 79% in December to about 59% in June. The Humidity in percentage for the year 2014-15 is given in the table below

Max	92	93	100	98	100	100	99	100	100	98	98	94
Min	41	41	47	47	34	52	68	56	53	60	62	91

Annex-II Master Plan of the Port and Contractor's Laydown Area



Contractor's Laydown Area is indicated in Red Box. Further the Contractor shall provide boundary around the area prior to use.

Master plan 2047 for VOCPA by Nippon Koei India Pvt Ltd (2025)

VOCPA has appointed M/s Nippon Koei India Pvt. Ltd. as the consulting engineer to prepare the Master Plan 2047, outlining a 25-year strategy to expand and modernize VOC Port. The plan focuses on analyzing major cargo routes, identifying logistical challenges, and developing infrastructure to support future growth in cargo and vessel sizes. It also includes strategies for efficient land use and sustainable port operations.

The Master Plan 2047 highlights key projects to enhance operations, improve hinterland connectivity, and strengthen VOC Port's role as a major maritime hub. In addition to proposed inner harbour upgrades, the study confirms the need for an outer harbour to handle future transshipment activities.

Transhipment Container Cargo at VOC Port as per Nippon Koei Traffic Study would be as follows:

Commodity	Unit	Year 2030	Year 2040	Year 2047
Containers	(MTEU)	1.4	2.04	2.52

The Outer harbour development and the layout confirmed in Master Plan Study by AECOM and Detailed Project Report (DPR) by NTCPW, has been confirmed in the study by M/s Nippon Koei India Pvt Ltd.

Annex-III

List of Reference Drawings

As per Schedule H

Schedule B DEVELOPMENT OF PROJECT

Implications for VOC Port – Outer Harbour

To enhance its competitiveness and attract mainline larger vessel calls, VOC Port must align the design of its Outer Harbour development with these evolving global and regional trends. At present, VOC Port predominantly handles feeder and medium-sized container vessels due to draft limitations at the inner harbour.

The Outer Harbour therefore represents a critical opportunity to transform VOC Port into a regional transshipment and gateway hub, serving both domestic cargo and international mainline networks, ensuring the port remains competitive and responsive to evolving trade requirements.

The design philosophy for the Outer Harbour should focus on:

- Deep-draft access: to accommodate vessels up to 24,000 TEU capacity.
- Berth design: Structural capacity and quay length suitable for vessels of 400 m LOA and 61 m beam.
- Advanced handling systems: Deployment of ship-to-shore cranes with outreach for 25–26 container rows and lift heights exceeding 50 m.
- Efficient hinterland connectivity: Seamless multimodal integration with road, rail, and coastal shipping networks to ensure rapid cargo movement.

Phased Development Approach

Considering long-term trade growth and fleet evolution, the development of the Outer Harbour at VOC Port should adopt a strategy to attract larger vessels of up to 24,000 TEU, as approximately 40% of vessels calling at competing ports range between 18,000 TEU and 24,000 TEU. Therefore, it is proposed to design the port layout to accommodate the largest vessel, as summarized in below.

VOC Outer Harbour – Design Vessel

Phase	Phase I & II		
Class of vessel	Ultra	Large	Container Carrier
Capacity	24,346 TEU		
Length over all (LOA)	399.9 m		
Beam (B)	61.3 m		
Draft (D)	16.26 m		

Due deepening of channel etc vessels upto 18m can be accommodated.

Future Outlook

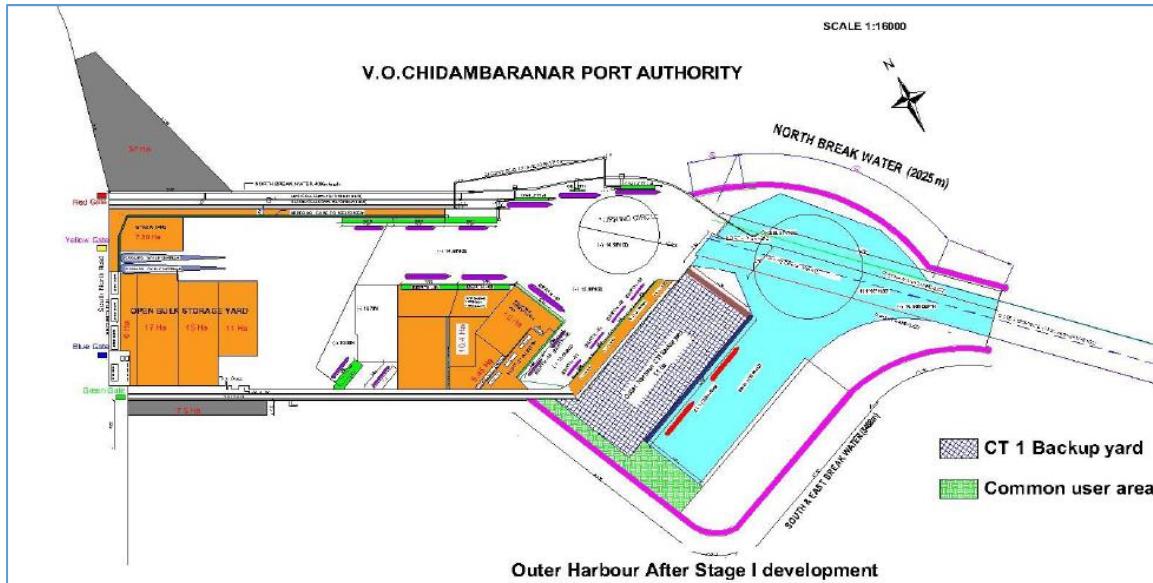
As shipping lines continue to deploy ULCCs on Asia–Europe and Asia–Africa routes, Indian ports must position themselves to accommodate such vessels to capture transshipment and mainline traffic. The Outer Harbour at VOC Port, strategically located along the East–West international shipping corridor, can serve as a complementary facility to Colombo, Vizhinjam, and Vadhvan by offering deep-draft access, scalable infrastructure, and proximity to the industrial hinterland of Tamil Nadu.

Through phased, future-ready development, VOC Port can evolve into a next-generation deep-water container hub, capable of handling ULCCs, supporting sustainable trade growth, and reinforcing India's position as a key maritime link in global container shipping networks.

Conclusion – Strategic Positioning of VOC Port

In the evolving landscape of global container shipping, where ports like Colombo, Vizhinjam, and Vadhvan are setting new benchmarks in ULCC-handling capability, the Outer Harbour development at VOC Port represents a strategic opportunity to strengthen India's presence along the East–West maritime corridor. Positioned on the southeast coast with excellent hinterland connectivity to Tamil Nadu's major industrial and logistics clusters, VOC Port can effectively complement Colombo's established transshipment role and serve as the primary deep-water gateway for South and Southeast India. By adopting a phased, future-ready development approach, VOC Port can achieve long-term competitiveness, support sustainable trade growth, and emerge as a key link in India's network of next-generation container hubs. Therefore, it is proposed to design the port layout to accommodate the largest vessel, which is 24,346TEU

Development of Project under Phase –1

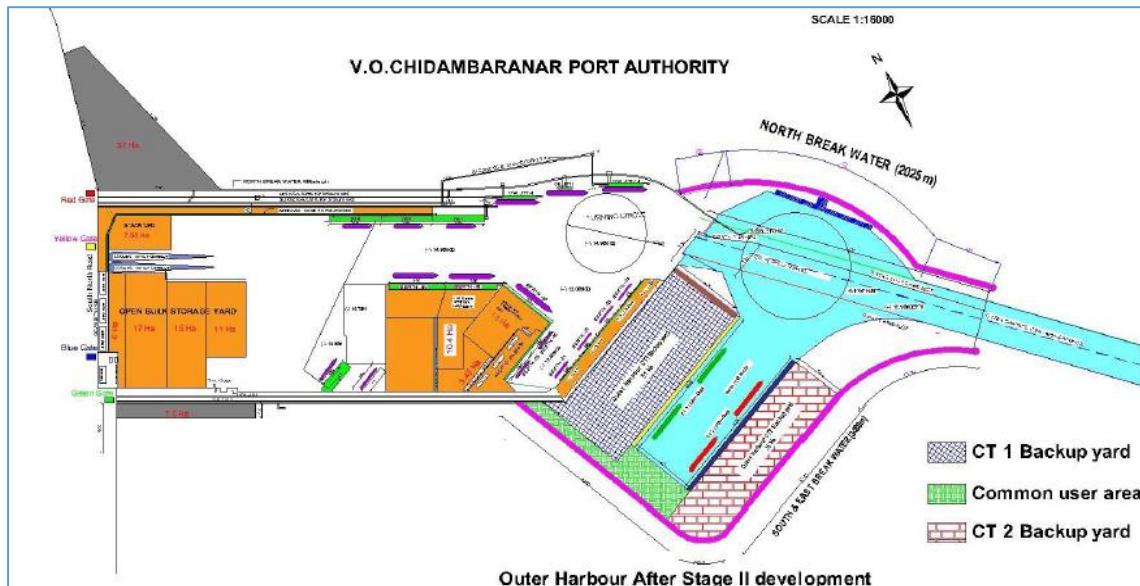


1. Development of the Land to be created adjacent to the south of existing south breakwater using rocky soil dredged from channel and basin of outer harbour for development of Container operations backup yard – 54 Ha and adjoin the new south break water about 42 Ha.
2. Development of continuous wharf of 1000m on the south side of the existing south break water, for accommodating 24000TEU vessel.
3. Construction of new south and north Break waters and revetment bund
4. Capital dredging in the channel to cater vessels upto 18.0m
5. Development of Railway yard
6. Electrical works
7. Mechanizing the Container wharf/ berth and Yard along with necessary MEP works
8. Container stacking yard development on the reclaimed soil
9. Building works

Development of Project under Phase – 2

1. Development of continuous wharf of 1000m for accommodating 24000TEU vessel.
2. Development of Railway yard
3. Electrical works

4. Mechanizing the Container wharf/ berth and Yard along with necessary MEP works.



Annex -I

Description of the Project

Dredging

Dredging for the Outer Harbour is required to ensure safe navigational access for the anticipated range of container vessels. Since the necessary depths are not naturally available at the proposed site, dredging must be undertaken. The total dredging volume is determined as the difference between the required water depths and the existing seabed levels across the approach channel, basin, and berthing areas.

The dredging quantities have been estimated using the following surveys and investigations carried out by VOCPA through accredited survey agencies:

- Bathymetry survey conducted by Nisvo Marine Surveys LLP (June 2025)
- Geotechnical Investigation Report for the Inner Harbour Basin and Approach Channel by Horizon Survey Company India Pvt. Ltd. (June 2018)
- Seismic Refraction and Bathymetry Survey for the Inner Harbour Basin and Approach Channel by Fugro Survey (I) Pvt. Ltd. (April 2018)

Based on the bathymetry data and dredging requirements, the approach channel lengths for both phases have been assessed. The required dredging for various Outer Harbour components is summarized below:

- Outer Channel: Dredging to -19.50 m CD and widening to 295 m, as an extension of the existing Inner Harbour channel. Total length: 10,500 m.
- Inner Channel: From harbour entrance to turning circle, dredging to -17.90 m CD.
- Turning Circle: Dredging to -18.70 m CD to enable safe manoeuvring of the largest design vessel.
- Dock and Berth Areas: Dredging to -17.90 m CD.

Reclamation and Backup Area:

Based on past experience and test results from previous reclamation works using material dredged from the Inner Harbour, it has been established that the dredged material is suitable for use as reclamation fill. The dredged material from the harbour basin and approach channel is proposed to be utilized as reclamation fill for yard development and for creating a corridor for the gate complex along the outer side of the existing South Breakwater.

A reclaimed area of approximately 460 m behind the berth line is planned for the development of backup facilities, including container stack yards, administrative and operational buildings, utilities, and supporting services. Adequate internal and external road and rail connectivity will be provided to ensure efficient cargo movement and seamless multimodal integration. The land required for external road connectivity is also accounted for in the layout.

In addition, a 300 m wide area corresponding to the Phase II development zone is proposed to be reclaimed to optimize the overall layout and facilitate future expansion. The reclaimed area will be contained and stabilized using a properly designed reclamation bund to ensure long-term structural integrity and slope stability.

To determine the required reclamation level, it is essential to establish the berth top level/deck level and the finished level of the container yard. The top of deck level has been determined in accordance with Clause 3.6.7 of IS: 4651 (Part V)–1980, as detailed below:

Mean high water spring level	-	(+) 0.99 m CD
Half the incident wave height of 1.5m wave is assumed) (Check in IIT Report)	-	0.75 m (Limiting wave height
Air gap	-	0.5 m
Allowance for Storm surge	-	1.0 m
Avg. depth of deck element	-	1.0 m
Total Height	-	(+) 4.34 m CD say, 4.50m CD

The reclamation level is planned to be maintained at 0.5 m below the deck level to accommodate the development of the stack yard and associated facilities. Accordingly, the proposed top level of reclamation is (+) 3.8 m CD.

The total reclamation quantity required for the proposed development is estimated to be approximately 15.44 million cubic metres (M cum) for yard formation. It is proposed to utilise the dredged material generated from the deepening of the approach channel, manoeuvring area, and the new dock basin for this purpose. The reclaimed area will be enclosed with a peripheral protection bund constructed along the boundary of the reclamation footprint. The breakwater will function as the

protective bund along its alignment, while along the berth frontage a rock bund is proposed to ensure adequate containment and stability of the reclaimed area.

The phase-wise backup area requirement and corresponding reclamation quantities are summarised below, with a detailed analysis and breakdown presented in the following sections

Phase	Backup area, Ha	Reclamation quantity, Mcum
Phase I	54.7	8.66
Phase II	41.6	6.78
Total	96.3	15.44

Land side facilities

Storage area

The container stack yard is the operational core of a container terminal, particularly for transshipment operations, serving as the critical interface between quay operations and vessel loading. Its layout, equipment, and stacking strategy directly influence terminal throughput, container dwell time, and berth productivity. For transshipment terminals, yard operations must prioritize rapid horizontal transfers, high stacking density, and efficient container flow paths to ensure seamless handling and quick vessel turnaround. Typically, a container terminal is organized into the following operational zones

a) Zone 1 – Quay Apron Area

Zone 1 is the deck/berth structure. It accommodates Ship-to-Shore (STS) cranes, crane rail beams and maintenance track. There will be space for terminal tractor/trailer movement, mooring fittings, fenders, bollards, hatch cover and utilities.

b) Zone 2 – Quay Transfer / Interface Area

This area acts as the interface between quay operations and the yard. They will have dedicated lanes for terminal tractors, reach stackers, or automated guided vehicles (AGVs).

c) Zone 3 – Container Stackyard

This area is divided into multiple stacking blocks arranged perpendicular/parallel to the quay. Each block is typically 6+1 or 7+1 containers wide (for RTG operations) or twin RMGs for automated systems. This zone includes transfer lanes between blocks for equipment circulation.

d) Zone 4 – Reefer, Empty and Auxiliary Yard

They are normally allocated for reefer containers with plug-in power points (typically 10–15% of total yard capacity). Some cases this zone includes empty container stacking, container repair shed, and maintenance area.

- e) **Zone 5 – Internal Roads, Gate Complex and Administration Area**
- f) This area comprises of internal circulation roads, truck holding area, security gate, customs inspection, and terminal office. This zone mostly includes parking for terminal equipment and emergency access roads.

For a modern container terminal, a yard width of about 350–400 m is considered optimum to handle high-density stacking with efficient RTG or RMG operations, ensuring sufficient circulation and transfer lanes.

Annex – II

Description of Augmentation

1. Area of Augmentation

The area of Augmentation is described below:

The Concessionaire shall undertake construction of Augmentation of port area, so that the Project meet the Authority requirement.

2. Reclamation

The reclamation work includes filling of suitable dredged material inside reclamation bund. The reclamation work shall be undertaken in accordance with the parameters set forth below and at the area specified in Drawing which is attached at Annex – I and Annex -III of Schedule-A:

- Reclamation of land parcel with dredge rock fill in the area specified in Drawing which is attached at Schedule H
- The finished reclamation level shall be a minimum as indicated in drawings , and as per the levels as indicated in the drawings.
- Ground improvement of the sand fill including:
 - Additional sand fills for settlement compensation
 - Vibro compaction or any other appropriate technics
 - Soil monitoring program (instrumentation, monitoring and analysis)

3. Common Port Infrastructure

3.1 Development of Internal Road

Preparation of sub-base, sub grade over the reclaimed land including pavements at the finished level of (+) 4.5m CD as indicated in drawings.

3.2 Utilities

Laying of drainages, concrete cable trenches excluding container terminal area, laying of streetlights and high masts along the main internal road within landlord area with cable connections with a provision to plug in to the port main supply excluding the power supply to container terminals, rail yard as indicated in drawings.

4. Standards and Specifications

The Project shall be constructed in conformity with the Specifications and Standards specified in Annex-II of Schedule-D.

SCHEDULE – C DPR OF OUTER HARBOUR DEVELOPMENT AT VO Chidambaranar PORT

Attached

SCHEDULE – D SPECIFICATIONS AND STANDARDS

1. Construction of the Project

The Concessionaire shall comply with the Specifications & Standards and Construction Methodology set forth in Annex-I of this Schedule-D for construction. Attached.

Annex-I Manual for Standards, Specification and Method for the Design and Construction of Project

1. GENERAL FEATURES

1.1. GENERAL

The Project Facilities shall confirm to the requirements of Codes, Standards, Designs and Construction methodology as set out in the Annex-I of Schedule D.

The project report and other information provided by the Authority shall be used by the Concessionaire only for its reference and for carrying out further investigations. The Concessionaire shall be solely responsible for undertaking all the necessary surveys, investigations and detailed designs in accordance with good industry practice and due diligence and shall have no claim against the Authority for any loss, damage, risk, costs, liabilities or obligations arising out of or in relation to the project report and other information provided by the Authority.

The document covers the general requirements, design requirements, minimum requirements for materials, workmanship, preparation of armour unit works, dredging work and offshore reclamation works, filling of the rail yard with subgrade, sub-base and granular fill, internal roads, utilities – drainage, cable trench, streetlights and high masts which the Concessionaire shall complete in accordance with the Agreement.

SCHEDULE-E APPLICABLE PERMITS

(See Clause 4.1.3)

1 Applicable Permits

- 1.1 The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement.
 - (a) Permission of the State Government for extraction of boulders from quarry; and
 - (b) Permission of the Pollution Control Board for the installation of crushers.
 - (c) Permission and Approval for seaworthiness of Dredgers and Floating crafts including expats crew from Ministry of Home Affairs (MoHA).
 - (d) Operating permit, access permit, custom clearance of imported equipment, coast guard permit and coastal navigation permit/license.
 - (e) Any other permits or clearances required under Applicable Laws;
- 1.2 Unless otherwise specified in this Agreement, Applicable Permits, as required, relating to environmental protection and conservation ie. Environmental Clearance for the Project shall have been procured by the Authority as a Condition Precedent.

SCHEDULE – F

PERFORMANCE SECURITY

(See Clause 9.1)

The Chairperson
V.O.Chidambaranar Port Authority
Tuticorin - 628004

WHEREAS:

- (A) (the "Concessionaire") and the Chairperson, V.O. Chidambaranar Port Authority (the "Authority") have entered into a Concession Agreement dated (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking "Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port" (the "Project") on design, build, operate and transfer (the "DBOT Annuity" or "Hybrid Annuity") basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. ***** cr. (Rupees ***** crore) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of Head of the department in the V.O. Chidambaranar Port Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or

performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 30% (thirty per cent) of the Bid Project cost which is deemed to be Rs.*** cr. (Rupees **** crore) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
12. This guarantee shall also be operable at our _____ branch at [location], from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being _____ invoked and payment thereunder

claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

13. The guarantor/ bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of VOCPA, details of which is as under:

Name of the Bank	: Indian Overseas Bank, Harbour Branch Tuticorin 628004
Name of the Branch	: Harbour Branch
SB Account No	: 01430100000001
IFSC Code	: IOBA0000143
Beneficiary's Name	: V.O.CHIDAMBARANAR PORT

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

Enclosure-1

Annexure I

Format For Guarantee For Mobilization Advance Schedule F (See Clause 23.8)

The Chairperson
V.O.Chidambaranar Port Authority
Tuticorin - 628004
WHEREAS:

(A) (the "Concessionaire") and the Chairman & Managing Director, V.O.Chidambaranar Port (the "Authority") have entered into a Concession Agreement dated (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port" ("DBOT Annuity or Hybrid Annuity") basis, subject to and in accordance with the provisions of the Agreement.

(B) In accordance with Clause 23.8 of the Agreement, the Authority shall make to the Concessionaire an interest bearing (@average of one year MCLR of top 5 Scheduled Commercial Banks¹⁰ plus 1.25%, compounded annually) advance payment (herein after called "Mobilization Advance") not exceeding 10% (ten per cent) of the Bid Project Cost; and that the Mobilization Advance shall be made in two instalment(s) subject to the concessionaire furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment to remain effective till the complete and full payment of the instalment of the Mobilization Advance as security for compliance with its obligations in accordance with the Agreement. The amount of first instalment of the Mobilization Advance is Rs.----- Cr. (Rupees----- Crore) and the amount of 2nd instalment of the Mobilization Advance is Rs.----- Cr. The amount of this Guarantee is Rs. --- Cr for first instalment & Rs. --- Cr for second instalment respectively.. (Rupees--- crore) (the "Guarantee Amount")¹¹.

(C) We,through our branch at (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") for the Guarantee Amount

¹⁰ The Authority shall declare the list of top 5 Scheduled Commercial Banks on 1st September every calendar year based on the balance sheet size as declared in their annual reports. The 1 year MCLR of top 5 Scheduled Commercial Banks shall be taken at the start of every quarter.

¹¹ The Guarantee amount should be equivalent to 110% of the value of the applicable instalment.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of Mobilization Advance under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Head of the department in the V.O. Chidambaranar Port Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Mobilization Advance under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. The Bank further also agrees that the Authority at its option shall be entitled to enforce this Guarantee against the Bank as principal debtor, in the first instance without proceeding against the Concessionaire and notwithstanding any security or other guarantee that the Authority may have in relation to the Concessionaire's liability.
4. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
5. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

6. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Mobilization Advance or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
7. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Mobilization Advance.
8. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 9 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Guarantee shall cease to be in force and effect on _____ 12 unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
10. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
11. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof

¹² Initially the validity shall be 60 days after the expected date for tenth payment milestone mentioned in clause 23.4 of the Agreement. If the Concessionaire submits the Guarantee which has validity period which is less than that specified herein, then the Concessionaire shall also provide an undertaking to the Authority which states that the Concessionaire shall get the validity of the Guarantee extended so that the Guarantee is valid in accordance with the footnote.

forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

12. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 9 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
13. This guarantee shall be operable at ourBranch at Chennai/, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
14. The guarantor/bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of VOCPA, the details of which are as follows:

Name of the Bank	: Indian Overseas Bank, Harbour Branch Tuticorin 628004
Name of the Branch	: Harbour Branch
SB Account No	:0143010000000001
IFSC Code	:IOBA0000143
Beneficiary's Name	: V.O.CHIDAMBARANAR PORT AUTHORITY

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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



Schedule F (See Clauses 9.1)

[Performance Security/ Additional Performance Security]

The Chairperson
V.O.Chidambaranar Port Authority
Tuticorin - 628004

WHEREAS:

- (A) _____ (the "Concessionaire") and the Chairman & Managing Director, V.O. Chidambaranar Port (the "Authority") have entered into a concession agreement dated _____ (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking **Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port** , subject to and in accordance with the provision of the agreement
- (B) The agreement requires the Concessionaire to furnish a performance security to the Authority in a sum of Rs *** Crore (Rupees *** Crore) (the "Surety Bond Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement)
- (C) We, _____ through our branch at (the "Surety Insurer") have agreed to furnish this Surety Bond by way of Performance security.

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

1. The Surety Insurer hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Surety Bond Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Head of the department in the V.O.Chidambaranar Port Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Surety Insurer. The Surety

Insurer further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Surety Insurer, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Surety Bond, the Authority shall be entitled to act as if the Surety Insurer were the principal debtor and any change in the constitution of the Concessionaire and/or the Surety Insurer, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Surety Insurer under this Surety Bond.
4. It shall not be necessary, and the Surety Insurer hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Surety Insurer its demand under this Surety Bond.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Surety Insurer under this Surety Bond, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Surety Insurer shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Surety Insurer from its liability and obligation under this Surety Bond and the Surety Insurer hereby waives all of its rights under any such law.
6. This Surety Bond is in addition to and not in substitution of any other Surety Bond or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Surety Insurer under this Surety Bond is restricted to the Surety Bond Amount and this Surety Bond will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Surety Insurer under this Surety Bond, no later than 6 (six) months from the date of expiry of this Surety Bond, all rights of the Authority under this Surety Bond shall be forfeited and the Surety Insurer shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 30% (thirty per cent) of the Bid Project cost which is deemed to be Rs. ** cr. (Rupees *** crore) for the purposes of this Surety Bond, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority, shall release the Performance Security forthwith.
9. The Surety Insurer undertakes not to revoke this Surety Bond during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Surety Bond and the undersigned has full powers to do so on behalf of the Surety Insurer.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Surety Insurer at its above referred branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Surety Bond shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
12. This Surety Bond shall also be operable at our Branch at Chennai, from whom, confirmation regarding the issue of this bond or extension/renewal thereof shall be made available on demand in the contingency of this bond been invoked and payment thereunder claimed, the said branch shall accept

such invocation on letter and make payment of amounts so demanded under the said invocation.

13. This Surety Bond is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

Signed and sealed this..... Day of 2026.....at.

SIGNED, SEALED AND DELIVERED

For and on behalf of the surety insurer by:

(Signature)

(Name)

(Address)

(Designation)

(Code Number)

SCHEDULE – G

PROJECT COMPLETION SCHEDULE (See Clause 12.1)

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “Project Completion Schedule”).

Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. Project Milestone-I of Phase – 1

- 2.1. Project Milestone-I of Phase – 1 shall occur on the date falling on the **365th (Three Hundred and Sixty Fifth)** day from the Appointed Date (the “Project Milestone-I”).
- 2.2. Prior to the occurrence of Project Milestone-I of Phase - 1, the Concessionaire shall have expended not less than 20% (twenty per cent) of the total capital cost for Phase – 1 set forth in the Financial Package.
- 2.3. Prior to the occurrence of Project Milestone –I of Phase - 1, the Concessionaire shall have commenced construction of the Wharf and achieved 50% of Physical Progress back up yard reclamation of Phase - 1.

3. Project Milestone-II of Phase - 1

- 3.1. Project Milestone-II of Phase – 1 shall occur on the date falling on the 730th (Seven Hundred and Thirty) day from the Appointed Date (the “Project Milestone-II”).
- 3.2. Prior to the occurrence of Project Milestone-II of Phase - 1, the Concessionaire shall have expended not less than 35% (thirty five per cent) of the total capital cost for Phase – 1 set forth in the Financial Package. Provided, however, that at least 70% (seventy percent) of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.
- 3.3. Prior to the occurrence of Project Milestone –II, the Concessionaire shall have Completed the Wharf construction of the Project Phase 1 and achieved 100% of Physical Progress for Backup yard by Reclamation yard of Phase – 1.

3.4. Prior to the occurrence of Project Milestone –II, the Concessionaire shall have Completed the 30% of the revetment bund construction of the of Phase -2 end and achieved 100% of Physical Progress on Break water Construction.

4. Project Milestone-III of Phase - 1

4.1. Project Milestone-III of Phase - 1 shall occur on the date falling on the 965th (Nine Hundred and Sixty Fifth) day from the Appointed Date (the “Project Milestone-III”).

4.2. Prior to the occurrence of Project Milestone-III of Phase - 1, the Concessionaire shall have commenced construction of all Project Facilities and expended not less than 75% (seventy five per cent) of the total capital cost for Phase - 1 set forth in the Financial Package.

4.3. Prior to the occurrence of Project Milestone –III, the Concessionaire shall have commenced construction of the Project and achieved 75% Physical Progress of Phase – 1.

4.4. After 100% of the reclamation area under Phase 1, upto design levels all roads, drainage, and utilities within Phase -1 area shall be completed.

5. Project Milestone – IV of Phase-1 Scheduled Completion Date

5.1. The Phase-1 Scheduled Completion Date shall be as per Clause 12.3.1.

5.2. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

5.3. All roads, drainage, electrification within Phase 1 area, shall be usable.

6. Project Milestone-I of Phase – 2

6.1 Project Milestone-I of Phase – 2 shall occur on the date falling on the **365th** (**Three Hundred and Sixty Fifth day**) day from the 2nd Appointed Date (the “Project Milestone-I”).

6.1. Prior to the occurrence of Project Milestone-I of Phase - 2, the Concessionaire shall have completed the wharf construction and not less than 75% (fifty per cent)] of the total capital cost for Phase – 2 set forth in the Financial Package.

7. Project Milestone-I of Phase – 2 Scheduled Completion Date

7.1. The Phase-2 Scheduled Completion Date shall be as per Clause 12.3.1.

7.2. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

8. Extension of period

- 8.1. Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

Format for Contract Price Weightages for Project
Contract Price Weightages

1.1 The Contract Price for this Agreement is Rs. _____
 1.2 Proportions of the Contract Price for different stages of Construction of the Project Phase(s) shall be as specified below:

S#	Description	HAM
1	Breakwater	13.09%
2	Dredging	69.57%
3	Land Reclamation (Ground improvement)	0.16%
4	Reclamation bund protection	2.58%
5	Container Berths	11.02%
6	Port Craft Berths	0.51%
7	Navigation Aids	0.14%
8	Gate Complex Corridor including 6 lane road	1.04%
Total Marine Works		
B	EQUIPMENT	
1	Container Handling Equipment	NA
2	Port Crafts (Leased)	NA
Total Cost of Equipment		NA
C	ONSHORE WORKS	
1	Buildings	NA
2	Container yard Pavement & RTG Track	NA
3	Rail yard and tie-in	0.50%
4	Power distribution & Area Lighting	0.55%
5	Potable water distribution network	0.02%
6	Fire network system	0.18%
7	Storm Water Drain, Sewerage network system	0.22%
8	Communication & IT Network System	0.33%
9	Miscellaneous - all other items required for operation and not included in above items such as weigh bridge, watch tower, refer access platforms, etc.	0.09%
Total Onshore Works		
D	Total Basic Infrastructure Cost HAM (A+B+C)	100%

SCHEDULE – H**DRAWINGS**

(See Clause 12.2)

1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.

Annex - I

List of Drawings

A minimum list of drawings of the various components/ elements of the Project and project facilities required to be submitted by the Concessionaire is given below:

- (a) General arrangement and layout drawings;
- (b) Detailed design drawings.
- (c) Survey drawings and charts;
- (d) Shop drawings;
- (e) Installation sequence and temporary structures;
- (f) Services drawings, showing civil provision for utility including the duct lines for utilities being supplied by others;
- (g) Mechanical equipment drawings for mechanical items (Marine furniture) included in this Contract;
- (h) Erection drawings;
- (i) Civil provision for cable and conduit routes;
- (j) Electrical circuit diagrams for electrical items (Marine furniture) included in this Contract;
- (k) Logic diagrams;
- (l) As-built drawings.
- (m) Wharf and layout etc

(See Clause 14.1.2)

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Port to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 Draft Test: The Independent Engineer shall measure the Draft at the Port and verify its conformity with this Agreement.
- 2.4 Concrete test - The Concessionaire shall carry out tests to verify that the rock complies with the requirements specified in standards and specifications.
- 2.5 Fill Material test - Samples of the Reclamation Fill Material shall be tested in accordance with BS 1377as appropriate to confirm the Fill Material for compaction, internal friction when first placed and when compacted, when tested at densities to reflect the as placed and post compacted densities.

- 2.6 Rock Quality Test at Quarry- The Concessionaire shall carry out tests to verify that the rock complies with the requirements specified in standards and specifications.
- 2.7 Rock Quality Test at Site - The Concessionaire shall undertake routine testing for Grading, average weight, size distribution tests of core material: every 5,000 tonnes as a minimum, or more frequently as required depending on control of grading exercised. Point Load Strength Index tests of all rock gradations: every 10,000 tonnes as a minimum or more frequently as required depending on the variability of rock produced.
- 2.8 Geotextile test - The Concessionaire shall provide test certificates from the manufacturer for all proposed filter fabrics, in accordance with Table 1 BS EN 13253:2016 proving the material quality meets the requirements.
- 2.9 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Port with Specifications and Standards.
- 2.10 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Port with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.11 Safety review: Safety audit of the Port shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Port with the provisions of this Agreement.

3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

5 Tests during construction

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE – J**COMPLETION CERTIFICATE**

(See Clause 14.2 & 14.3)

I/ We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated(the “Agreement”), for “**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**” (the “Project”) on design, build, operate and transfer (the “DBOT Annuity or Hybrid Annuity”) basis, through.....(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project [Phase-1/Phase-2] can be safely and reliably placed in commercial service in accordance with Article 15 of the Agreement.

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 2026

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

- 1 I/We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement Dated..... (the "Agreement"), for "**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**" (the "Project") on design, build, operate and transfer (the "DBOT Annuity or Hybrid Annuity") basis through.....(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Project/section..... of the Project to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Project/section of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, 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 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,]^δ I/We am/are 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/We am/are satisfied that the Project/section of the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project/section of the Project is hereby provisionally declared fit for entry into commercial operation on this the day of..... 20

ACCEPTED, SIGNED, SEALED SIGHNED, SEALED AND

AND DELIVERED

DELIVERED

FOR AND ON BEHALF OF

CONCESSIONAIRE by:

FOR AND ON BEHALF OF

INDEPENDENT ENGINEER by:

^δMay be struck out if not applicable. Also strike out other parts which are not applicable.

(Signature)

(Signature)

(Name and Designation)

(Name and Signature)

(Address)

(Address)

SCHEDULE – K

MAINTENANCE REQUIREMENTS

(See Clause 17.2)

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the O&M Facilities of the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the “Maintenance Requirements”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of O&M Facilities specified in Annex – I, of the defects and deficiencies specified in Annex - II of this Schedule - K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - II of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2 In respect of any defect or deficiency not specified in Annex - II of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and

any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity the Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

8 Display of Schedule - K

The Concessionaire shall display copy of this Schedule –K at the site along with the complaint register stipulated in article 40.

ANNEX – I

O&M Facilities (Schedule-K)

The Concessionaire obligation for Operation & Maintenance under Article 17 and this Schedule K include the project facilities stated hereinbelow (the “O&M Facilities”)

- (a) Revetment Bund
- (b) Reclaimed land at reclaimed level as per drawings
- (c) In-port Common Rail yard development in layer of granular fill, subgrade and subbase
- (d) Internal roads
- (e) Utilities – drainage, cable trench, streetlights and high mast

ANNEX – II Repair/Rectification of Defects and Deficiencies (Schedule-K)

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.

SHORE PROTECTION BUND

S. No.	Nature of defect or deficiency	Time limit for Repair/ rectification
(i)	Displacement / Damage of Stones, Armour Units	[.]
(ii)	Removal of Debris	[.]

RECLAIMED LAND

S. No.	Nature of defect or deficiency	Time limit for Repair/ rectification
Entire reclaimed land till 2 years post Schedule Completion Date of Phase - 1		
(i)	Settlement below level as per Drawings	[.]
Unoccupied reclaimed land after 2 years of post-Schedule Completion Date of Phase – 1		
(ii)	Settlement below level as per Drawings	[.]
Entire reclaimed land till 2 years post Schedule Completion Date of Phase - 2		
(iii)	Settlement below level as per Drawings	[.]
Unoccupied reclaimed land after 2 years of post-Schedule Completion Date of Phase – 2		
(iv)	Settlement below level as per Drawings	[.]

IN-PORT COMMON RAIL YARD

S. No.	Nature of defect or deficiency	Time limit for Repair/ rectification
(i)	Damage to granular fill/ subbase/ subgrade	

COMMON Port Infrastructure

S. No.	Nature of defect or deficiency	Time limit for Repair/ rectification
(i)	Damage to Pavement	
a.	Raveling/Stripping of concrete blocks over surface exceeding 10 sq. m	[.]
b.	Pot Holes, Bleeding/Skidding	[.]
c.	Cracking and rutting in more than 5% of surface in a stretch of 100 m	[.]
d.	Removal of Debris	[.]
e.	Painting signages and reflective signages, road markers	[.]
(ii)	Drainage and Trenches	
a.	Removal of debris and cleaning of trench	[.]
b.	Damage to walls and cracks	[.]
c.	Desilting of drains and rectifying crash barriers	[.]
(iii)	Streetlight and highmast	
a.	Major failures of the system	[.]
b.	Faults and minor failures	[.]

SCHEDULE – L

SAFETY & HEALTH REQUIREMENTS (See Clause 18.1.1)

Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 deleted.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety in relation to the Project:

- a. Applicable Laws and Applicable Permits;
- b. Manual of Safety in Port Design and Operations
- c. Provisions of this Agreement; and
- d. Good Industry Practice.

Besides the above, the Concessionaire shall also abide by the following insofar as they relate to safety

- a. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
- b. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
- c. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
- d. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
- e. The Explosives Act, 1884 along with The Explosive Substance Act, 1983 & The Explosive Rules, 1983
- f. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
- g. National Fire Codes (National Fire Protection Association – USA)

- h. Drill Manual for the Fire Services of India.
- i. International Safety Guide for Oil Tankers & Terminals.
- j. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
- k. MARPOL CONVENTION
- l. International Maritime Dangerous Goods Code
 - a. [●] ;
 - b. [●] ;

3 **Appointment of Safety Consultant**

For carrying out safety audit of the Project under and in accordance with this Schedule-L, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “Safety Consultant”). The Safety Consultant shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project.

4 **Safety measures during Development Period**

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project. The Safety Consultant shall collect data on all safety incidents.
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety (the “Safety Drawings”). The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.
- 4.3 The accident data and the design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the “Safety Report”) shall be submitted to the Authority, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.

4.5 Without prejudice to the provisions of Paragraph 4.4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 **Safety measures during Construction Period**

5.1 A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected COD, for carrying out a safety audit of the completed Construction Works.

5.2 The Safety Consultant shall collect and analyses the accident data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule- L. It shall study the Safety Report for the Development Period and inspect the Project to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on the Project. Such recommendations shall be

processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and users in accordance with the applicable guidelines for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

6.1 The Concessionaire shall develop, implement and administer a surveillance and safety program for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

6.2 The Concessionaire shall designate one of its officers to be in-charge of Safety.

6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Concessionaire shall also collect data for all cases of safety incident and accidents not recorded by the Police. The Concessionaire shall also record the exact location of each accident on a map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.

6.4 The Concessionaire shall submit to the Authority before the 31st(thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-L for averting or minimizing such accidents in future.

6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyses the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the Project Facilities. Such recommendations shall be processed,

mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

7 **Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-L, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

SCHEDULE – M SELECTION OF INDEPENDENT ENGINEER

(See Clause 21.1)

1 Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/ 2008 dated 21 May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-M.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-M.

2 Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform to Schedule-N.

3 Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavor that payments to the Independent Engineer on account of fee and expenses do not exceed 3% (three per cent) of the Bid Project Cost. Payments not exceeding such 3% (three per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by

the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

4 Selection every three years

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule-M, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-M.

5 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government- owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Engineer.

SCHEDULE – N

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

(See Clause 21.2.1)

1 Scope

These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the Concession Agreement dated (the “Agreement”), which has been entered into between the Authority and the “Concessionaire” **“Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port”** on design, build, operate and transfer (the “DBOT Annuity or Hybrid Annuity”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.
- 3.1 The role and functions of the Independent Engineer shall include the following:
 - (I) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) Review, inspection and monitoring of Construction Works as set forth in Paragraph 5; conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5
 - (iv) Review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;

- (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (viii) Assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
- (ix) Undertaking all other duties and functions in accordance with the Agreement.

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

4 Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including 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/ observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 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 within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Authority, the Independent Engineer shall review and; comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Period

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works and the Project 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 Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

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

5.5 For determining that the Construction Works conform to Specifications and 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. For purposes of this Paragraph 5.5, the tests specified in the Schedule I and the Standards and Specifications as per Schedule D, or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

- 5.6 The tests, to be specified by the Independent Engineer under Paragraph 5.5, shall be as per Schedule D of this Agreement; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Management Plan as per Schedule D. 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.
- 5.8 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 Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, 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 COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.
- 5.16 Upon reference from the Authority, the Independent Engineer shall undertake the assessment of cost of civil works, as per applicable schedule of rates, for the reduction of Scope of work as provided in Clause 16.6.1 of the Concession Agreement.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 6.2 The Independent Engineer shall review the annual Maintenance Program furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Program.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the

Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any lane(s) of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimize disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.12 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with the provisions of this Agreement.

7 **Termination**

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 32.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 33, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8 **Determination of costs and time**

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

9 **Assistance in Dispute resolution**

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

10 Other duties and functions

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

11 Miscellaneous

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

SCHEDULE – O

ESCROW AGREEMENT
(See Clause 25.1.2)

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, 2013 and having its registered office at (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior 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 (insert 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 The V.O. Chidambaranar Port having its principal offices at _____ (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated _____ with the Concessionaire (the “Concession Agreement”) for the “**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**” (the “Project”) on design, build, operate and transfer (the “DBOT Annuity or Hybrid Annuity”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“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

“Sub-Accounts” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

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 Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined

in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 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 appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes 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 Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, 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 Appointed Date, 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 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 O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.
- 2.5 Rights of the Parties Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, 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 Authority, the Lenders' Representative 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 Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company 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 Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:
 - (a) All monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
 - (b) All funds received by the Concessionaire from its shareholders, in any manner or form;
 - (c) Any other revenues; rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
 - (d) All proceeds received pursuant to any insurance claims.

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

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) All revenues collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to 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, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;
- (c) All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (f) Any amounts due and payable to the Authority;
- (g) Monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No 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 Clause 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 Termination upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Deleted;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 33 of the Concession Agreement;
- (f) Outstanding Debt Service including the balance of Debt Due;
- (g) Outstanding Subordinated Debt;
- (h) Incurred or accrued O&M Expenses;
- (i) Any other payments required to be made under the Concession Agreement; and
- (j) Balance, if any, in accordance with the instructions of the Concessionaire: Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds:

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

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 utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

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 and Sub-Accounts 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 therewith; 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 therewith.

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 Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the 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 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 Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub- Accounts 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 Sub- Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, 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 INDEMNITIES

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior 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 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 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 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 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, (the "Rules") or such

other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity The 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 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 judgment 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 judgment that may be made or given in connection therewith).

11.3 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.

11.4 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 authorized representatives of the Parties.

11.5 Waiver

11.5.1 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;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 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.

11.6 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.

11.7 Survival

11.7.1 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.

11.7.2 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.

11.8 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.

11.9 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.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized 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 authorized representative by similar notice.

11.13 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.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the by the Board of Directors of the Concessionaire has been affixed For and on behalf of pursuant to the resolution passed by the SENIOR LENDERS by the Board of Directors of the Concessionaire Lenders Representative: at its meeting held on the day of 20 hereunto affixed in the presence of , Director, who has signed these presents in token thereof and Company Secretary / Authorized Officer who has countersigned the same in token thereof*

AND
DELIVERED
behalf of
LENDERS by the
representative:
For and on
SENIOR
Lender's

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax N°)

(E-mail address)

(E-mail address)

SIGNED, SEALED AND

SIGNED, SEALED AND

DELIVERED

DELIVERED

For and on behalf of

for and on behalf of

THE ESCROW BANK by

THE AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(E-mail address)

(E-mail address)

*To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SIGNED, SEALED

In the presence of:

SCHEDULE – P

PANEL OF CHARTERED ACCOUNTANTS (See Clause 27.2.1)

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “Panel of Chartered Accountants”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-P.

2 Invitation for empanelment

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

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) The firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) The firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) The firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

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

3 Evaluation and selection

- 3.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).
- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalize and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-P.

SCHEDULE – Q

VESTING CERTIFICATE
(See Clause 32.4)

- 1 The Chairman, V.O.Chidambaranar Port (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for “**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**” (the “**Project**”) on design, build, operate and transfer (“**DBOT Annuity or Hybrid Annuity**”) basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 2026

At.....

AGREED, ACCEPTED AND SIGNED
DELIVERED

SIGNED, SEALED AND

For and on behalf of

for and on behalf of

CONCESSIONAIRE by:

AUTHORITY by:

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

In the presence of:

- 1.
- 2.

SCHEDULE – R

SUBSTITUTION AGREEMENT

(See Clause 34.3.1)

THIS SUBSTITUTION AGREEMENT is entered into on this the.....day of.....20.....

AMONGST

- 1 The V.O.CHIDAMBARNAR PORT , having its principal offices at (Hereinafter referred to as the “Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (Hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (insert name and particulars of Lenders’ Representative) and having its registered office at....., acting for and on behalf of the Senior 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);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated..... With the Concessionaire (the “**Concession Agreement**”) for the “**Construction of Breakwater, Rock Bund, Wharf and capital dredging and reclamation for backup yard and allied onshore facilities including maintenance thereof on Hybrid Annuity Model (HAM) under Development of Outer Harbour at V.O. Chidambaranar Port**” , (the “**Project**”) on design, build, operate and transfer basis (the “**DBOT Annuity or Hybrid Annuity**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Substitution 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 Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

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 Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 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.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favor of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

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’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favor of the Nominated Company selected by the Lenders’ Representative in accordance with this

Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the 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' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 30 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the 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' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written

request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company 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 Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the

Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the 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 Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) Accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

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

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 31 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the 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 Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is 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. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

- Termination of the Agreement; or
- No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- The Concessionaire will indemnify, defend and hold the Authority and the 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 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 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 Authority, its officers, servants and agents.

7.1.3 The 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' 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' Representative, its officers, servants and agents.

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 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The 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 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 judgment 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 judgment that may be made or given in connection therewith).

9.3 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.

9.4 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 authorized representatives of the Parties

9.5 Waiver

9.5.1 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;
- (b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either 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 a 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.

9.6 **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.

9.7 **Survival**

9.7.1 **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.

9.7.2 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.

9.8 **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 8 of this Agreement or otherwise.

9.9 **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.

9.10 **Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or

e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized 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 authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three 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

THE COMMON SEAL SIGNED, SEALED
OFCONSESSIONAIRE has been affixed AND DELIVERED
pursuant to the resolution passed by the For and behalf of THE AUTHORITY
Board of Directors of the Concessionaire by:
at its meeting held on the.....day of
the20.....here unto affixed
in to the presence of.....the
Director, who has signed these presents
in token thereof,

.....Company
Secretary /Authorized Officer who has
countersigned the same in token thereof[¥].

(Signature)
(Name)
(Designation)
(Address)
(Fax No.) (e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.) (e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the

Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

In the presence of:

1. 2.

[¥]To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors

**SCHEDULE – S ARBITRATION RULES OF THE SOCIETY FOR
AFFORDABLE REDRESSAL OF DISPUTES - PORTS (SAROD-PORTS)**
(See Clause 38)

ARBITRATION RULES OF SAROD-PORTS
I N D E X

Rule

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
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11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
13. Appointment of Substitute Arbitrator
14. Independence and Impartiality of the Tribunal
15. Code of Ethics for Arbitrators
16. Challenge of Arbitrators
17. Decision on Challenge
18. Removal of the Tribunal
19. Re-hearing in the Event of Replacement of the Tribunal
20. Jurisdiction of the Tribunal
21. Fees of SAROD-PORTS - Ports and Arbitral Tribunal
22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding

26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings
29. Documents - only Arbitration
30. Witnesses
31. Experts Appointed by the Tribunal
32. Rules applicable to substance of dispute
33. Closure of Hearings
34. Additional Powers of the Tribunal
35. Deposits to Costs and Expenses
36. Decision Making by the Tribunal
37. The Award
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39. Correction of Awards
40. Settlement
41. Interest
42. Costs
43. Waiver
44. Exclusion of Liability
45. General Provisions
46. Amendment to Rules

PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD-PORTS - Ports) has been formed as a Society under Societies Registration Act, 1860 with registration _____ . It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the

Memorandum of Association of SAROD-PORTS

SAROD-PORTS ARBITRATION

RULES

Rule: 1 - Scope of Application

1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.

1.2 These rules shall come into effect from the day of approval by Governing Body of SARODPORTS.

Rule 2 - Definitions

2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".

2.2 In these Rules:

"Act" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

"DOMESTIC ARBITRATION" means arbitration to be conducted under these rules.

"SAROD-PORTS" means the Society for Affordable Redressal of Disputes- Ports.

"SAROD-PORTS Arbitrator Panel" means the list of persons admitted to serve as arbitrators under these Rules.

"IPA" means Indian Ports Association

"IPPTA" means Indian Private Ports and Terminals Association

"GOVERNING BODY" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"SECRETARY" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"TRIBUNAL" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

"PARTY" means a party to an arbitration agreement,

"E-Arbitration" means submission of pleadings, defense statement etc. by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.

3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4 - Commencement of Arbitration

4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party {"the Respondent"}, a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:

- (a) a request that the dispute be referred to arbitration;
- (b) the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- (c) a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- (d) a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- (e) a brief statement describing the nature, facts and circumstances leading to the dispute;
- (f) the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
- (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- (h) the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within 14 (fourteen) days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- (a) A confirmation or denial of all or part of the claims;
- (b) Brief statement of the nature and circumstances of any envisaged counterclaims
- (c) A comment in response to any proposals contained in the Notice of Arbitration; and
- (d) The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6 - Filing of Case Statements

6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.

6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defense and counterclaim (if any) along with all documents to be relied upon by the Respondent.

6.3 Within 30 days after the service of the statement of Respondent's defense, if the Claimant intends to challenge anything in the statement of Respondent's defense and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defense to counterclaim.

6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

6.6 The party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 - Contents of Case Statements

7.1 The case statements must contain the detailed particulars of the party's claim, defense or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

7.2 It must:

- a) Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
- b) State fully its reasons for denying any allegation or statement of the other party.
- c) State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

8.2 If the Respondent fails to submit a Statement of Respondent's Defense; the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD-PORTS to Provide Assistance

10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11 - Appointment of Tribunal

11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.

11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD-PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, the eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defense and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,

11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,

11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12 - Multiparty appointment of the Tribunal

12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

12.2 If the parties are unable to do so, upon the lapse of the 21-day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13 - Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.

14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

Disclosure

15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances, in terms of the Arbitration and Conciliation Act, 1996 as amended from time to time.

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
- (b) The extent of any prior knowledge he may have of the dispute.

Bias

15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favors one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence

arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.8 No arbitrator shall Communicate with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

15.10 In accepting an appointment, an arbitrator agrees to the remuneration asprescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

Conduct

15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16 - Challenge of Arbitrators

16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct

16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,

16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

16.6 The Notice of Challenge must state the reasons for the challenge.

16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

18.1 The Governing Body may on the application of a party remove an arbitrator:

- (a) Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
- (b) Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
- (c) Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.

18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.

18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.

18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. [neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated or participated in the appointment of an arbitrator.

20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.

20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 - Fees of SAROD-PORTS and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22 - Transmission of File to the Tribunal

22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23 - Judicial Seat of Arbitration

23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be Tuticorin.

23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10 AM to 5 PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.

26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 - Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter

claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the timetable with or without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.

29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.

29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation

30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31 - Experts Appointed by the Tribunal

31.1 Unless otherwise agreed by the parties, the Tribunal may:

- (a) appoint one or more experts to report the Tribunal on specific issues;
- (b) require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.

31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute - Where the place of arbitration is situated in India

32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.

33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to: - (a) Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;

- (b) Extend or abbreviate any time limits provided by these Rules;
- (c) Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- (d) Order the parties to make any property or thing available for inspection
- (e) Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
- (f) Make orders or give directions to any party for interrogatories;
- (g) Make orders or give directions to any party for an interim injunction or any other interim measure;
- (h) Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35- Deposits to Costs and Expenses

36.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

36.1 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defense and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

36.1 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the

Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.

36.1 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.

36.1 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.

36.1 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders

36.1 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.

36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,

37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based.

The award shall contain the date and shall be signed by the arbitrator or arbitrators.

37.4 The Tribunal may make interim awards or separate awards on different issues at different times.

37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.

37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38 - Additional Award

38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

Rule 40 - Settlement

40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

40.2 The Parties shall:

- (a) Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
- (b) Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.

40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on. agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41- Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of State Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42 - Costs

42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

42.2 In this Rule, "costs of the arbitration" shall include: '

- (a) The fees and expenses of the Tribunal and the administration fees of the SAROD-PORTS as determined by the Secretary in accordance with the Schedule of Fees;
- (b) The costs of tribunal appointed experts or of other assistance rendered: and
- (c) All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc.) of one party shall be paid by the other party.

Rule 43 - Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45 - General Provisions

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time-to-time issue Practice Notes on the implementation of these Rules.

Rule 46 - Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD-PORTS.

Schedule T**SUPPORTING PROJECT INFRASTRUCTURE
(See Clause 4.2)****Nil**

Schedule U INDICATIVE FORMAT FOR SECURITY CLEARANCE
(See Clause 5.10)

Information required for obtaining security clearance

I. Details in respect of Company/Firm (Indian/Foreign)

Sr No	Name of Firms/Bidders	Date of registration of the company	Address of Head Office, Regional Office and Registered Office	Previous name of the company if any	Details of earlier approvals, if any(ref. No. and Date)

II. Details in respect of Director

Sr No	Full Name of Board of Directors	Present Position held with date (since when)	Date of Birth	Parentage	Present and Permanent Address	Nationality	Passport No. and issue date, if any	Contact Address and Telephone number

III. Details of shareholders of applicant company (All firms/companies/entities/individuals having shareholding more than 10%)

Sr No.	Full Name	Parentage Father/Mother	Date of Birth	Permanent Address	Present Position held in the company, if any	Nationality (if holding dual nationality, both must be clearly mentioned)	% of shares held in the company

IV. Details of criminal cases, if any against the Company/Director(s)

Self-declaration for company of Director(s) for whom security clearance is sought

- Name and address and registration number of the company
- Name and address of owners, promoters and directors of the company

1
 2
 3

- Is the company Owners, promoters or directors listed above the subject of any?

- Preventive detention proceedings (PSA/NSA etc.) : YES/NO
- Criminal proceedings : YES/NO

- d. If Yes, Please provide following details
 - 1. Detention case/FIR/Warrant number
 - 2. Police station/District /Agency
 - 3. Section of law
 - 4. Name and place of the court
- e. The above mentioned details are in respect of both the Indian and any other foreign country.

Note : The above self-declaration is required to be filled and signed by the authorised signatory of the company.