

**NEW MANGALORE PORT AUTHORITY
MINISTRY OF PORTS, SHIPPING AND WATERWAYS**

GOVERNMENT OF INDIA

DRAFT SCHEDULES

VOLUME III – RFP

**OPERATION AND MAINTENANCE OF EXISTING 32 BEDDED
HOSPITAL AND ESTABLISHMENT OF 150 BEDDED
MULTISPECIALITY HOSPITAL ON PPP BASIS.**

AUGUST 2023

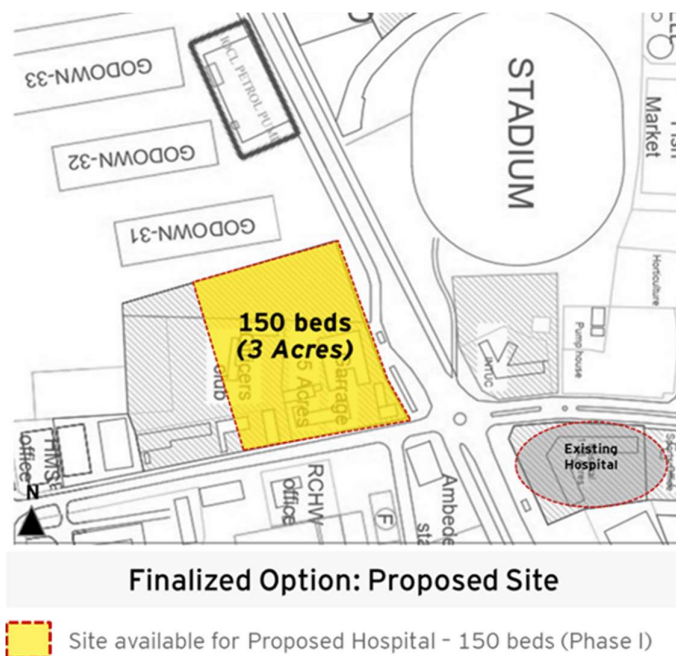
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SCHEDULE A: SCOPE OF THE PROJECT

1. Site Details

The Proposed site for the hospital is shown below:



- ▶ Greenfield development of 150 bedded multispecialty hospital is proposed. 60 years is the concession period for proposed development.
- ▶ Development is proposed on 3 acres of land parcel owned by NMPA, 100 meters from the current NMPA hospital. Site is in proximity of NMPA residential colony and has direct access from NH-66. The location is well connected to public transport as it is close to Panambur bus stand.
- ▶ Concessionaire will have 2 years from the Appointed Date to develop the proposed 150 bedded multispecialty hospital and then operate and maintain it for remaining concession period.

2. Proposed development of the Project

The project is to be developed in the following phases:

Phase – 0: Operations and Maintenance of Existing 32 bedded hospital.

In initial two years of concession period, concessionaire will be required to operate and maintain the existing 32 bedded NMPA hospital.

The broad scope of work under this phase will include:

- Operate and maintain existing 32 bedded hospital
- Deploy adequate manpower to operate the hospital

Phase – I: Mandatory development of 150 bedded multi-specialty hospital

Along with O&M of existing hospital, concessionaire will be required to construct the

proposed greenfield development of 150 bedded hospital on 3 acres of land within 2 years from Appointed Date. After constructing the proposed 150 bedded hospital in initial 2 years, the concessionaire shall operate and maintain the 150 bedded hospital for remaining concession period (58 years). The concessionaire will be required to handover the existing site of 1.3 acres back to NMPA after 2 years or achievement of COD whichever is earlier.

The broad scope of work under this phase will include:

- Greenfield development of 150 bedded hospital in accordance with the provision of this Agreement
- Deploy adequate manpower to operate the hospital
- Equip the hospital for multi-specialties
- Install requisite diagnostic facilities

3. Development timelines

Phases	Description
Mandatory Phase	
Phase 0 (2 years)	<ul style="list-style-type: none"> • Operations and maintenance of existing 32 bedded hospital
Phase I (60 years)	<ul style="list-style-type: none"> • Construction of 150 bedded hospital on 3 acres of land (Construction period – 2 years from the Appointed date). • Operation and maintenance (O&M) of proposed 150 bedded hospital (O&M period – 58 years)

4. Minimum Manpower requirement

The Concessionaire shall ensure deployment of adequate Specialist, Doctors, Clinical Staff and non-clinical, Admin, HR, Marketing etc as per the applicable standards.

Table below provides detail of the minimum manpower (specialists only) required for each department of the proposed 150 bedded NMPA Hospital:

Specialty	Specialist	#
Internal Medicine	Internal Medicine Specialist	2
Nephrology	Nephrologist	1
Medical Gastro-enterology	Medical Gastroenterologist	1
Behavioural sciences and mental health specialist	Psychiatrist	1
Behavioural sciences and mental health specialist	Clinical psychologist	1

Specialty	Specialist	#
Rheumatology	Rheumatologist	2
Infectious Disease and pulmonology	Infectious Disease expert	1
Dermatology	Dermatologist	2
Geriatric medicine	Geriatric care expert	1
Endocrinology and metabolic disorders	Endocrinology and metabolic disorders	1
General Surgery & Laparoscopy	Surgeon	3
Gastro-surgery	GI surgeon	1
Onco surgery in all specialties	Onco-surgeon	1
Paediatric surgery	Paediatric surgeon	1
Minimal access surgeries in all specialties	Surgeon trained in lap surgeries	
Replacement surgeries - Joint	Respective specialist to manage	2
Hepato-biliary surgery	Gastroenterologist	1
Urology	Urologist	1
Neurosurgery	Neurosurgeon	1
Drug allergies & Toxicology	Clinical Pharmacologist	1
Cardiology	Interventional Cardiologist	1
Obstetrics and Gynaecology	Obstetrician & Gynecologist	2
Orthopaedics	Orthopedician	2
Emergency Medicine and Disaster Management	Emergency medicine specialist or trained Orthopedian/surgeon in emergency medicine	2
Trauma and head-injury	Emergency medicine specialist or trained Orthopedician/surgeon in emergency medicine	1
Maxillofacial surgery	Maxillofacial surgeon	1
ENT	ENT expert	1
Neurology-Adult and Paediatrics	Neurologist	1
Eye	Ophthalmologist, Retinal surgery	1
Dental Sciences	Dentist	1
Paediatrics	Paediatrician	2
Neonatology	Neonatologist	1
Foetal medicine expert	Neonatologist/ Internal medicine expert with training in foetal medicine and genetic disorders	1
Critical care	Critical care specialists/ Anesthetists trained in critical care	2
Sleep Medicine	Chest Medicine or neurologist or ENT or Dental	1
Palliative care	Oncologist & palliative care expert	1
OT and ER services	Anesthetist	2

Specialty	Specialist	#
Lab medicine	Laboratory medicine expert	1
Histopathology	Histopathologist	1
Microbiology	Microbiologist	1
Hematology	Hematologist	1
Banking and Transfusion medicine	Transfusion medicine expert or pathologist trained in blood banking	1
Radiology services	Radiologist (CT, MRI, Memo)	3
Pulmonology & Respiratory Medicine	Pulmonologist	1

5. Mandatory Departments and Services

	Mandatory inclusions
Multi Specialties	<ul style="list-style-type: none"> ▪ General Medicine ▪ General Surgery & Laparoscopy ▪ Obst. & Gynac ▪ Orthopedics ▪ ENT ▪ Ophthalmology ▪ Dental with all speciality services ▪ Paediatrics ▪ Dermatology ▪ Psychiatrics ▪ Geriatric Medicine ▪ Anaesthesia ▪ Radiology ▪ Pathology ▪ Pulmonology & Respiratory Medicine
Operation Theatre Requirements	<ul style="list-style-type: none"> ▪ Three Modular OTs ▪ One Cath Lab

Super Speciality Services (Medical)	Super Speciality Services (Surgical) – OPD Services (Diagnostic and Referral Services only)
<ul style="list-style-type: none"> • Medical Gastroenterology • Nephrology • Neurology • Internal Medicine / Diabetology • Rheumatology • Neonatology • Medical Oncology • Cardiology 	<ul style="list-style-type: none"> • Urology • Surgical Gastroenterology • Surgical Oncology • Plastic Surgery • Neurosurgery • CTS

6. Diagnostics

Department	For 150 Bedded Hospital
Laboratory Medicine	<ul style="list-style-type: none"> ▪ Basic Hematology ▪ Biochemistry ▪ Clinical Pathology ▪ Basic culture-sensitivities ▪ ELISA, PCR ▪ Immunohistochemistry ▪ Cyto pathology ▪ Mycology ▪ Advanced Microbiology and ▪ Virology, including H1N1 ▪ Autoimmune antibody testing - ANCA, P-ANCA
Imaging	<ul style="list-style-type: none"> ▪ Digital x-ray ▪ MRI (3 Tesla) ▪ 256 slice CT Scan ▪ Dental x-ray ▪ USG ▪ Fluoroscopy ▪ C-Arm ▪ Holmium laser therapy ▪ Mammography ▪ Color Doppler ▪ DEXA Scan ▪ PACS for Imaging services Data management ▪ PET Scan
Cardiology & Pulmonology	<ul style="list-style-type: none"> ▪ ECG, stress ECG ▪ Treadmill, Stress induced treadmill ▪ Spirometry, Oximetry ▪ Cath lab—Angiography and plasty ▪ 3D Echo-cardiography ▪ Holter Monitor ▪ Digital subtraction imaging for Angiography and Angioplasty
Molecular Diagnostics	<ul style="list-style-type: none"> ▪ Cancer markers ▪ FISH
Medicine and its super - specialties	<ul style="list-style-type: none"> ▪ Fine Needle Aspiration Cytology (FNAC) & biopsy ▪ Audiology – BERA ▪ Bone Marrow Aspiration studies ▪ Lumbar Puncture studies ▪ Mediastinoscopy ▪ Bronchoscopies

Department	For 150 Bedded Hospital
	<ul style="list-style-type: none"> ▪ USG guided FNAC ▪ Gastroenterology – All scopies ▪ Dermatology – Allergy panel assays ▪ Neurology, Nerve conduction tests ▪ EEG ▪ EMG ▪ EKG ▪ Sleep Labs

Note:

1. Pre-operative beds, daycare beds, beds in emergency department, post-operative beds, baby warmers in the nursery will not be considered as a part of hospital bed compliment.
2. General surgery OTs and Cath Lab has to be a modular OT.
3. Speciality mentioned above are mandatory obligations for development of 150 bedded proposed hospital

- ▶ Hospital Management Information system is a must to integrate diagnostics and therapeutics.
- ▶ Occupational therapy and physiotherapy with its advances are must for basic and advanced treatment success.
- ▶ Kitchen and Dietary services are also an essential service that must be provided to the patients.

SCHEDULE B: SPECIFICATIONS AND STANDARDS

The Project shall comply with the following standards/norms/guidelines and their latest revisions/amendments for construction, operation, maintenance and management of the Hospital.

I. Standard to be followed for construction, operation, and management of Hospital:

- National Accredited Board of Project and Healthcare Providers (NABH) standards for Project (as per prevailing standard);
- National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services (as per prevailing standard);
- International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL) (as per prevailing standard);
- National Building Code of India (NBC) guideline issued by Bureau of Indian Standards in 2005 and latest published version;
- Hospital’s Medical Gas Pipeline System (MGPS) shall conform to Health Technical Memorandum (HTM)-02-01: Medical gas pipeline systems Part A for Design, Installation, Validation and Verification, revised from time to time (prevailing standard)
- Environmental Sustainability Plan including:
 - Ministry of Environment and Forest (MoEF) Guidelines as applicable
 - the equator principles (<http://www.equator-principles.com>)
- Shall comply with Solar energy, rainwater harvesting, zero garbage and waste water recycling requirements of City Corporation, Mangalore as applicable
- To the extent possible shall construct energy saving building in the Hospital

II. Standard to be followed for maintenance of Hospital:

S No	Description	Guideline	Latest publication
1	General Maintenance of hospital	<ul style="list-style-type: none">• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital;	Prevailing Standard

2	Biomedical Equipment	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital. 	Prevailing standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers' maintenance manuals and guidelines. 	As applicable
3	Laboratory Equipment	<ul style="list-style-type: none"> International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL) 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers' maintenance manuals and guidelines 	As applicable
4	Radiology and Imaging Equipment	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services; and 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers maintenance manuals and guidelines 	As applicable
5	Plant and Machinery	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital. 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers' maintenance manuals' and guidelines 	As applicable

III. Standard to be followed for safety standards:

SN	Description	Guideline	Latest publication
1	Patient and staff safety	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital; 	3 rd edition; November, 2011
2	Building and Fire safety	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital; 	3 rd edition; November, 2011
		<ul style="list-style-type: none"> National Building Code of India (NBC) guideline issued by Bureau of Indian Standards. 	Latest available standard and state govt. guidelines

SCHEDULE C: APPLICABLE PERMITS

Indicative list of approval is mentioned below, Concessionaire shall have to make assessment of applicable permits, approvals, clearances:-

Sr. No.	Licenses/ Permits
1.	Building permit and completion certificate from the Municipality
2.	Consent to operate from the State Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment Protection Act
3.	Karnataka Private Medical Establishment Act, 2007 (amendments and Rules thereunder)
4.	Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1999
5.	Atomic Energy Act, 1954
6.	Goods and Services Tax Act
7.	Registration of Births and Deaths Act, 1969
8.	Indian Medical Council Act, 1956 and Code of Medical Ethics Regulations, 2002
9.	NoC from Chief Fire Inspector
10.	Registration for operation of X-ray machine with AERB
11.	Shops and Establishments Act, 1954
12.	Karnataka lifts, Escalators and Passenger Conveyors Act, 2012
13.	Sale of Goods Act, 1930
14.	License for Blood Bank
15.	Cable Television Networks Act, 1995
16.	Transplantation of Human Organs Act, 1994
17.	Radiation Protection Rules, 1971 and Radiation Surveillance Procedures for Medical Application of Radiation, 1989
18.	Labour, Tax laws, Electricity, Petroleum (for storage), Water and Consumer Protection laws
19.	NOC from Local Municipal Office under any Bye Laws
20.	Food and Safety Standards Act, 2006
21.	Narcotics and Psychotropic Substances Act, 1985
22.	Pharmacy Act, 1948
23.	Societies Registration Act, 1860
24.	Excise permit to store spirit (Central Excise Act, 1944)
25.	Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016
26.	Bio-medical Waste Management Rules, 2016
27.	Boilers Act, 1923

28.	Bengal Nurses Act, 1934
29.	Registration under PNDT Act, 1994 and MTP Act, 1971
30.	Any other applicable permit, as required time to time

SCHEDULE D: SELECT EMPLOYEES

Category	Existing (permanent)
Doctors	3
Nurses	4

- ▶ None of the permanent employees at NMPA will be deployed with private partner, though the permanent doctors and nurses will be providing the support services during the transition period (i.e., for 6 months from Appointed Date).

SCHEDULE E: PERFORMANCE SECURITY

FORM OF PERFORMANCE SECURITY

[On Stamp Paper of appropriate value]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this *[insert date]* day of *[insert month and year]* at *[insert place]* by *[insert name of bank]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor or Bank**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

BOARD OF TRUSTEES, for **NEW MANGALORE PORT AUTHORITY, MANGALORE** , represented by [●] (hereinafter referred to as the Authority which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

WHEREAS:

- (A) The Authority has entered into a concession agreement dated *[insert date]* (the **Concession Agreement**) with *[insert name of Concessionaire]*, a private limited company incorporated under the provisions of the Companies Act 2013 with 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).
- (B) In terms of the Concession Agreement, the Concessionaire has agreed to undertake the operation, maintenance and management of the Existing 32 bedded Hospital and establish, upgrade, develop, finance and equip the 150 bedded multi-specialty hospital and the operation and maintenance thereof at New Mangalore Port Authority, Mangalore (NMPA) (the **Project**), on a design, build, finance, operate, and transfer basis and offer Healthcare Services to Patients at the Project.
- (C) In terms of Clause 9.1 of the Concession Agreement, the Concessionaire is required to furnish to the Authority, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to INR 3,78,78,000 /- (Rupees Three Crore Seventy Eight Lakhs and Seventy Eight Thousand only) (the "**Guarantee Amount**") as security for the due performance or discharge of the Concessionaire's obligations and liabilities during the Construction Period until the COD of Phase-I, including payment of any

amounts due and payable by the Concessionaire as liquidated damages, as a Condition Precedent to the effectiveness of the Concession Agreement.

- (D) At the request of the Concessionaire and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee (“**Guarantee**”), for the due and punctual performance or discharge by the Concessionaire of its obligations and liabilities under the Concession Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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 Performance Security Period, under and in accordance with the Concession 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 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 Chief Medical Officer of the Authority or any officer authorised by the 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 Concession 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 Performance Security Period under the Concession 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 Concession 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 Concession 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 Concession 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 Concession Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Concession Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Security Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall remain in force and effect till the expiry of the Performance Security Period and unless a demand or claim in writing is made by the Authority to the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee (“**Claim Period**”), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
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 during the Performance Security Period pursuant to the provisions of the Concession Agreement.
12. The Bank's obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the Guarantee Amount.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

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:

The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

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 –LAND LEASE AGREEMENT

This Agreement for Lease of Land ("**Lease Deed**") is made and executed on this [____] day of [____]. 20[____], by and between:

- (i) BOARD OF TRUSTEES, for NEW MANGALORE PORT AUTHORITY, MANGALORE, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [●], represented by its{Chairman or any person authorised by him} with its principal office at [..... (hereinafter referred to as the "**Authority**" or "**Lessor**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- (ii) [*name of the Concessionaire*], having its registered office at [*insert*] represented through its authorised representative, [*insert details of the Concessionaire's authorised representative*] (hereinafter referred to as the "**Concessionaire**" or "**Lessee**", which expression shall unless repugnant to the subject or context mean and include its successors and permitted assigns) of the Second Part.

The Lessor and Lessee are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:

- A. The Parties have entered into a Concession Agreement dated *** (the "**Concession Agreement**"), wherein the Lessee has agreed to undertake the operation, maintenance and management of the Existing 32 bedded Hospital and establish, upgrade, develop, finance and equip the 150 bedded multi-specialty hospital and the operation and maintenance thereof (collectively the "**Project**") on PPP basis and the Lessor has agreed to provide the land for this purpose on leasehold basis, upon the terms and conditions specified in the Concession Agreement;
- B. The Lessor owns and is in possession of the land constituting the Site, as specified in the Concession Agreement and as delineated and set out in the Schedule hereto (herein referred to as "**the Site**");
- C. Pursuant to the provisions of the Concession Agreement, the Lessor now desires to lease the Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Site for the purposes set out in the Concession Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL

PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition and Interpretation

1.1 DEFINITIONS

The words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed 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.

- (a) "**Appointed Date**" shall have the meaning set forth in Clause 44 of the Concession Agreement;
- (b) "**Encumbrance**" means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;
- (c) "**Site**" shall have the meaning set forth in Recital B of this Lease Deed; and
- (e) "**Term**" shall have the meaning set forth in Clause 3 of this Lease Deed.

1.2 Interpretations

In this Lease Deed, except to the extent that the context requires otherwise:

the Annexure to this Lease Deed forms part of this Lease Deed and will be of full force and effect as though it is expressly set out in the body of this Lease Deed; and

the terms of this Lease Deed should be read in consonance with and not in derogation of the terms of the Concession Agreement.

2. Grant of lease and possession

- 2.1.1 In consideration of the covenants contained in the Concession Agreement and this Lease Deed and payment of the Lease Rent, the Lessor grants leasehold rights ("**Lease**") in respect of the Site, to the Lessee and the Lessee agrees to accept the Lease from the Lessor, for the duration of the Term together with all and singular rights, liberties,

privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Site or any part thereof, and to hold, possess, use and enjoy the Site and/or any part thereof, in accordance with the provisions of this Lease Deed, subject always, however, to the terms and conditions contained in the Concession Agreement.

2.1.2 The terms and conditions of the Concession Agreement shall be deemed to have been incorporated herein by reference. A copy of the executed Concession Agreement is annexed hereto as Annexure "A".

2.1.3 The possession of the Site shall be handed over to the Lessee in accordance with the provisions of the Concession Agreement.

3. Term

The Lease granted pursuant hereto shall be for a period of 60 (sixty) years commencing from the Appointed Date (the "**Term**"), subject to earlier termination as specified in the Concession Agreement. In the event the Concession Agreement is terminated for any reason whatsoever, this Lease Deed shall terminate automatically without any further action to be taken by the Lessor. It is further clarified that upon the termination of the Concession Agreement for any reason whatsoever, or upon expiry of the term of the Concession Agreement, as the case may be, the Lessee shall transfer and hand over to the Lessor the Site along with all the assets and facilities related to the Project including, but not limited to, all buildings, constructions or immovable assets, if any thereon.

4. Lease Rent

4.1 Upon execution of this Lease Deed and in consideration of the grant of the Lease, the Lessee has agreed to pay to the Lessor, Lease Rent in the manner prescribed in Clause 26.1 of the Concession Agreement.

5. Use of Site

During the Term of the Lease, the Lessee agrees to use the Site for carrying out its obligations under the Concession Agreement and for no other purpose.

6. Determination of Lease

6.1 The Lease and this Lease Deed may be determined in accordance with terms contained herein, the terms of the Concession Agreement or earlier by mutual agreement between the Parties in writing.

6.2 Upon determination under this Clause 6, the Lessor shall have the following rights:
(a) the recovery of any damages, costs, fees and expenses incurred by the Lessor as

- a result of the breach of this Lease Deed by the Lessee; and
- (b) any other right or remedy, legal or equitable, that the Lessor may be entitled to under Applicable Laws.

7. Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

- (a) subject to the terms of this Lease Deed and the Concession Agreement, the Lessee shall be entitled to possess, hold, use and enjoy the Site and every part thereof during the Term of this Lease Deed, without any interruption by the Lessor except as per the provisions of this Lease Deed;
- (b) the Lessee shall, during the Term of this Lease Deed, enjoy free ingress and egress to and from the Site without any hindrance;
- (c) subject to timely performance of the covenants and conditions contained herein and the Concession Agreement, the Lessee shall peacefully hold and enjoy the Site during the Term of this Lease Deed;
- (d) the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Site in accordance with the terms of the Concession Agreement;
- (e) Except with the prior express written approval of the Lessor and subject always to the terms of the Concession Agreement and any other conditions that may be prescribed by the Lessor while granting its approval, as above, the Lessee shall not be entitled to sub-lease, license or create any other Encumbrance or rights in the Site or any part thereof, in favour of any third party; and
- (f) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period upto the commencement of this Lease Deed. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Site shall be borne by the Lessee during the Term of this Lease Deed.

8. Sale, transfer or disposal of the Site

- 8.1 The Lessor may sell, transfer or otherwise dispose of the Site to any Government Instrumentality or any other entity owned or controlled by the Government of Karnataka or Government of India.
- 8.2 The Parties agree that any sale, transfer or other disposal of the Site or any part thereof

as provided in this Clause 8 shall always be subject to the leasehold rights of the Lessee set out in this Lease Deed and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Site or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Lease Deed.

9. Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

- (a) upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Site on "as is where is basis" and in the condition it is handed over and undertakes to use the same only for the purposes specified in the Concession Agreement;
- (b) the Lessee shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period from the commencement of this Lease Deed and during the Term;
- (c) during the Term, the Lessee shall undertake the development of the Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (d) it shall obtain and keep current all Applicable Permits that may be required under Applicable Laws;
- (e) it shall pay all Taxes assessments and levies in respect of the Site, which are leviable at any time during the Term;
- (f) except as specifically permitted herein, it shall not create any lien, charge or Encumbrance on the Site;
- (g) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Site; and
- (h) it shall (i) keep and maintain the Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Site, it shall make diligent efforts to remove such encroachments from the Site, as soon as practicable.
- (i) at the time of termination of the Concession Agreement due to any reason whatsoever, or the expiry of the term of the Concession Agreement, as the case may be, the Lessee shall return and hand over to the Lessor the Site and along with it all of the facilities and assets related to the Project which are present on the Site including but not limited to buildings, constructions or immovable assets, if any, thereon.

10. Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by the Government of Karnataka or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the Lease contemplated herein shall be to the account of and borne by the Lessee.

11. Indemnities and limitation of liability

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and
- (c) any breach, violation or non-compliance by the Lessee of any Applicable Laws and/or Applicable Permits.

12. Assignment

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed.

13. Dispute Resolution

The Dispute Resolution Procedure prescribed under the Concession Agreement shall apply to this Lease Deed.

(Note: copy Site schedule from the Concession Agreement prior to execution)

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of THE LESSOR
by:

(Signature)
(Name)
(Designation)

In the presence of:

1.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
by LESSEE:

(Signature)
(Name)
(Designation)

2.

SCHEDULE G: PROJECT COMPLETION SCHEDULE

During Concession Period, the Concessionaire shall comply with the requirements set forth in this Schedule for each of the Phases of the Project and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Phase, the Concessionaire shall notify authority of such compliance along with necessary particulars thereof.

The Concessionaire shall adhere to the Phase illustrated in the table below:

Phases	Description	Period for Phase	Key Specialties	Major Equipment
Phase –0	Operations of existing 32 bedded hospital	2 years from date of appointment	As per Schedule A	As per Schedule O
Phase – I	Construction, Operations and Maintenance of proposed 150 bedded hospital	Construction within 2 years from the appointed date and Operation of 150 bedded hospital post COD	As per Schedule A	As per Schedule O

SCHEDULE H: DRAWINGS

The Concessionaire shall furnish the following drawings of the Project Building, Service Block, and any other construction in the Site

- (a) Master Plan of the Project
- (b) Municipality Sanction Drawings
- (c) Detailed Architectural Drawings (floor wise)
- (d) Structural Drawings
- (e) Elevation drawings of all buildings
- (f) Facade design and drawings
- (g) Landscape drawings
- (h) Electrical drawings
- (i) Plumbing and sewerage drawings
- (j) HVAC (Heating, Ventilation and Air Condition) drawings
- (k) Fire Fighting System's drawings
- (l) Medical Gas Pipeline system's drawings
- (m) Lifts design and drawings
- (n) Interior design and drawings
- (o) Drawing for solar system (if any)
- (p) Signage designs
- (q) Any other as may be required

SCHEDULE I: TESTS

COMPLETION TESTS FOR PROJECT

- I. Authority shall arrange the Independent Engineer to verify and conduct the following Tests:**
- (a) Loose stones and/or plaster and/or bricks in the Project;
 - (b) Hanging electrical wire and/or temporary connects for electric supply and distribution system including the diesel generator (DG) sets, UPS systems and stabilizers; and
 - (c) Dripping taps and/or leaking pipes and/or blocked swage lines in the water supply and distribution system including supply of hot, cold, potable, ultra-pure water and steam water.
- II. Authority shall arrange the Independent Engineer to inspect the following work/ activities for award of Completion Certificate:**
- (a) Traction / transportation system;
 - (b) Public health engineering system (waste storage / disposal, effluent treatment plant); and
 - (c) Installation and commissioning certificates, warranty certificates of all plant and machineries, transformer, electrical panels, and non-medical equipment.
- III. The Concessionaire shall conduct the following tests during Project construction by the Government authorised agency and to provide the respective test certificates to Authority:**
- a) Soil test of the Project land
 - b) Water test of the Project land
 - c) Concrete / RMC test
 - d) Steel (TMT Bar) test
 - e) Cement Test
 - f) Brick test

SCHEDULE J: COMPLETION CERTIFICATE FOR PROJECT

1. I/We, (Name of the Independent Engineer and/or Independent Panel), acting as Independent Engineer and/or Independent Panel, under and in accordance with the Concession Agreement dated (the **Agreement**), for the Project in the city of New Mangalore, Karnataka through (Name of Concessionaire), hereby certify that the Tests specified in Clause 14.2 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the [relevant Phase of the Project] with the provisions of the Agreement, and I am satisfied that the [relevant Phase of the Project] can be safely and reliably placed in commercial service thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of [relevant Phase of the Project] have been completed, and the [relevant Phase of the Project] is ready for entry into commercial operation on this day of, 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER AND/OR INDEPENDENT PANEL by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE K: KEY PERFORMANCE INDICATORS

For monitoring the performance of Private partner post awarding the contract. KPI's related to Patient care, Infrastructure are mentioned below:

(a) KPIs for Patient care:

S. No.	KPI	Measure & Explanation	Baseline Requirement/ Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
1	Patient Satisfaction Survey	Patient satisfaction survey (survey of 5% patients in hospital at the time of discharge)	Rating of 3.5 on a scale of 5	Every decimal rating below overall 3.5	<ul style="list-style-type: none"> ▪ Random audit by IM ▪ Satisfaction forms collected by CMO 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0 & I)	For every decimal point rating below 3.5, 0.1% of PG
2	Patient Complaints	Number of Patient complaints reported	Less than 10% of the patients (for severe category)	Every occurrence beyond threshold	<ul style="list-style-type: none"> ▪ Patient Complaint 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0 & I)	For every additional complaint Rs. 1000

3	Priority to NMPA IP services (except for emergency or trauma cases)	Priority shall be given to NMPA patient in admission	Zero default	One or more incidences of default	<ul style="list-style-type: none"> HMIS data Random audit by IM Report by CMO 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0 & I)	Rs. 10,000 per incidence of default
4	Waiting time for NMPA OP services	Average waiting time of NMPA patients <= average waiting time of market patients (queuing al to take care)	Zero default	One or more incidences of default	<ul style="list-style-type: none"> HMIS data IT Tool for monitoring online & spot registration 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0 & I)	Rs. 10,000 per day extra waiting time

All the Liquidated Damages shall be capped to the value of Performance Security /Guarantee individually as well as collectively during a measurement cycle.

(b) KPIs for monitoring Infrastructure:

S. No	KPI	Measure & Explanation	Baseline Requirement/ Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
1	Periodic painting – interior & exterior	Period painting of interior or exterior buildings	Every 3 years	No painting within 30 days of due date	<ul style="list-style-type: none"> Maintenance register Random audit by IM 	1 st day of subsequent quarter for which assessment is	0.01* number of days of default * estimated

					<ul style="list-style-type: none"> Report by CMO 	being made (calculated from COD of Phase- 0 & I)	cost of painting ^s
2	Maintenance of Equipment	AMC & CMC	100% of the equipment	Non-renewal of AMC/CMC prior to the expiry for any equipment	<ul style="list-style-type: none"> AMC/CMC contract Annual maintenance plan as submitted to CMO 	On 1 st day of every quarter for which assessment is being made (calculated from COD of Phase-0 & I)	(0.01 * number of days of default) * cost of AMC/CMC for the equipment
3	Uptime of HMIS	Number of hours for which HMIS is down	Zero except planned maintenance	Any one unplanned occurrence	Authority /CMO reports	1 st day of subsequent quarter for which assessment is being made (calculated from COD of Phase- 0 & I)	For every hour of deviation Rs. 5,000
4	Obtaining and maintaining NABH, NABL and other	Not obtaining or maintaining the	Zero default	One or more incidences of default	Accreditation documents (copy to be submitted to NMPA each year)	From COD of Phase-I onwards	Rs. 100,000 per incidence of default plus reimbursement

accreditatio ns	accreditati on					nt at Non- NABH rates
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All the Liquidated Damages shall be capped to the value of Performance Security /Guarantee individually as well as collectively during a measurement cycle.

If not cured for one month, authority may step in to cure and charge 1.5 times of cost of curing (repair / replacement)

(c) Directive KPIs

S. No.	KPI - Measure & Explanation	Baseline Requirement/ Threshold limit	Source of Measuring Data
1	Adherence to Preventive Maintenance Plan	100% adherence	<ul style="list-style-type: none"> ▪ Random audit by IM ▪ Report by CMO
2	Re-infection rate	10%	<ul style="list-style-type: none"> ▪ Random audit by IM ▪ Report by CMO ▪ Self-reported
3	Needle stick injury	NA	·Self-reported
4	Referral service directory	100% referral to be recorded	·Random audit by IM
5	Master Patient Index with a single, unique Medical Record Number for each patient	100% patient to be recorded and should be traceable in the system	Random audit by IM

SCHEDULE L: SPECIALTY SERVICES

The Concessionaire shall have all specialty in the Project as set forth in this Schedule. The Concessionaire may add any additional specialty based on the market need in its discretion. The Concessionaire shall have all specialty as mentioned in this Schedule in phased manner and continue to operate for the entire Concession Period.

Tables below lists the proposed specialties for the 150-bedded hospital. Specialties have been divided into:

- a. Departments and services
- b. Diagnostics

a. Departments and services

	Mandatory inclusions
Multi Specialties	<ul style="list-style-type: none"> ▪ General Medicine ▪ General Surgery ▪ Obst. & Gynae ▪ Orthopedics ▪ ENT ▪ Ophthalmology ▪ Dental with all speciality services ▪ Paediatrics ▪ Dermatology ▪ Psychiatrics ▪ Geriatric Medicine ▪ Anaesthesia ▪ Radiology ▪ Pathology
Operation Theatre Requirements	<ul style="list-style-type: none"> ▪ Three Modular OTs ▪ One Cath Lab

Super Speciality Services (Medical)	Super Speciality Services (Surgical) – OPD Services (Diagnostic and Referral Services only)
<ul style="list-style-type: none"> • Medical Gastroenterology • Nephrology • Neurology • Internal Medicine / Diabetology 	<ul style="list-style-type: none"> • Urology • Surgical Gastroenterology • Surgical Oncology • Plastic Surgery

<ul style="list-style-type: none"> • Rheumatology • Neonatology • Medical Oncology • Cardiology 	<ul style="list-style-type: none"> • Neurosurgery • CTS
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b. Diagnostics

Department	For 150 Bedded Hospital
Laboratory Medicine	<ul style="list-style-type: none"> ▪ Basic Hematology ▪ Biochemistry ▪ Clinical Pathology ▪ Basic culture-sensitivities ▪ ELISA, PCR ▪ Immunohistochemistry ▪ Cyto pathology ▪ Mycology ▪ Advanced Microbiology and Virology, including H1N1 ▪ Autoimmune antibody testing - ANCA, P-ANCA
Imaging	<ul style="list-style-type: none"> ▪ Digital x-ray ▪ MRI (3 Tesla) ▪ 256 slice CT Scan ▪ Dental x-ray ▪ USG ▪ Fluoroscopy ▪ C-Arm ▪ Holmium laser therapy ▪ Mammography ▪ Color Doppler ▪ DEXA Scan ▪ PACS for Imaging services Data management ▪ PET Scan
Cardiology & Pulmonology	<ul style="list-style-type: none"> ▪ ECG, stress ECG ▪ Treadmill, Stress induced treadmill ▪ Spirometry, Oximetry ▪ Cath lab—Angiography and plasty ▪ 3D Echo-cardiography ▪ Holter Monitor ▪ Digital subtraction imaging for Angiography and Angioplasty
Molecular Diagnostics	<ul style="list-style-type: none"> ▪ Cancer markers ▪ FISH
Medicine and its super-specialties	<ul style="list-style-type: none"> ▪ Fine Needle Aspiration Cytology (FNAC) & biopsy ▪ Audiology – BERA ▪ Bone Marrow Aspiration studies

Department	For 150 Bedded Hospital
	<ul style="list-style-type: none"> ▪ Lumbar Puncture studies ▪ Mediastinoscopy ▪ Bronchoscopies ▪ USG guided FNAC ▪ Gastroenterology – All scopies ▪ Dermatology – Allergy panel assays ▪ Neurology, Nerve conduction tests ▪ EEG ▪ EMG ▪ EKG ▪ Sleep Labs

Note:

1. Pre-operative beds, daycare beds, beds in emergency department, post-operative beds, baby warmers in the nursery will not be considered as a part of hospital bed compliment.
 2. General surgery OTs and Cath Lab has to be a modular OT.
 3. Speciality mentioned above are mandatory obligations for the proposed hospital
-
- ▶ Hospital Management Information system is a must to integrate diagnostics and therapeutics.
 - ▶ Occupational therapy and physiotherapy with its advances are must for basic and advanced treatment success.
 - ▶ Kitchen and Dietary services are also an essential service that must be provided to the patients.

SCHEDULE M: INDEPENDENT ENGINEER AND INDEPENDENT PANEL

Part A

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

- 1 Scope
 - 1.1 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**) for the Project at New Mangalore, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
 - 1.2 This TOR shall apply to construction, operation and maintenance of the Project.
- 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 Role and functions of the Independent Engineer
 - 3.1 The role and functions of the Independent Engineer shall include the following:
 - (i) review of the Drawings for the purpose of construction including review of detailed design, construction methodology, quality assurance procedures as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 5;
 - (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 6; and
 - (vii) 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 review of the Drawings to be furnished by the Concessionaire along with supporting data. 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 Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documentation sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documentation.
- 4.3 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.
- 5 Construction Period
- 5.1 In respect of the Drawings and Documentation 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 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, 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 Hospital. 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 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 the Commercial Operation Date 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.
- 5.5 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, in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers, 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.
- 5.6 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works, 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.
- 5.7 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.
- 5.8 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-J and issue a Completion Certificate for Hospital.
- 5.9 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 Clause 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 6 Assistance in Dispute resolution

- 6.1 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.
- 6.2 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.

7 Other duties and functions

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

8 Miscellaneous

- 8.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 8.2 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.
- 8.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 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 one of the copies to the Authority along with its comments thereon.
- 8.4 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.
- 8.5 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 document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

Part B

TERMS OF REFERENCE FOR INDEPENDENT PANEL

[to be inserted at the time of selection of Independent Panel based on the actual service mix finalised by the Concessionaire]

SCHEDULE N: EQUIPMENT

Minimum Equipment requirements

The Concessionaire must have below equipment as per mentioned in this schedule. The minimum specifications of equipment (must have Indian Standard / FDA / CE) required in the Project are as follows:

List of equipment required for NMPA Hospital (150 beds)*	Department
Endovascular Surgical Cath Lab	Cardiology & Pulmonology
3.0 Tesla MRI	Imaging (Radiology)
Digital X-Ray	Imaging (Radiology)
Fluoroscopy	Imaging (Radiology)
3D and 4D Ultra Sound	Imaging (Radiology)
Digital Mammography	Imaging (Radiology)
Bone Densitometry unit	Dental
Computerised Optical biometry	Ophthalmology
A Scan Bio meter	Imaging (Radiology)
High resolution 3 dimensional Optical Coherence Tomography (OCT)	Ophthalmology
Automated static perimeter	Ophthalmology
Manual Kinetic Perimeter	Ophthalmology
Advanced Vitrectomy machine	Ophthalmology
Corneal cross linking device (C3R)	Ophthalmology
Applanation Tonometer	Ophthalmology
Synoptophore	Ophthalmology
Operating microscope for microvascular and microneural surgery	General Surgery & Other departments
Video stroboscope	ENT
BERA Phone	Audiology—BERA, Speech Therapy
Audiometer and impedance equipment	Audiology—BERA, Speech Therapy
Platelet apheresis unit	Laboratory Medicine
Plasma agitator	Laboratory Medicine
Component separator unit	Haematologist/General Medicine
Advanced cardiac life support ambulance	Cardiology/Emergency & Accident
Sleep lab	General Medicine & Other departments
EEG lab	Cardiology & Pulmonology
ECG with 12 para monitor	Cardiology & Pulmonology

List of equipment required for NMPA Hospital (150 beds)*	Department
Dialysers	Nephrology
Immunoassay analyser	General Medicine & Other departments
Biochemistry fully automated coulter	General Medicine & Other departments
Refractive suite for Femtolaser bladeless LASIK (WaveLight)	Ophthalmology
Corneal topographer	Ophthalmology
Corneal Pachymeter	Ophthalmology
Autorefractometer	Ophthalmology
Autokeratometer	Ophthalmology
Non-contact tonometer	Ophthalmology
Fundus Fluorescein Angiography Camera	Ophthalmology
B Scan Ultrasound	Imaging (Radiology)
Pattern Scan Retinal Laser	Ophthalmology
Nd-YAG laser	Ophthalmology/Dermatology
Endoscopic Plastic Surgery Instrumentation	Dermatology
Synthes Plating System for CranioMaxillofacial and Hand Surgery	Dermatology
CO2 Laser	Dermatology
Radiofrequency ablation system	Imaging (Radiology)
PET CT	Cardiology & Pulmonology
Endovascular Hybrid Operating Suite	Cardiology & Pulmonology
Heart pump	Cardiology & Pulmonology
Treadmill Test (TMT)	Cardiology & Pulmonology
Echocardiography (Colour Doppler)	Cardiology & Pulmonology
Electrophysiology Study	Cardiology & Pulmonology
64 Slice CT Scan	Imaging (Radiology)

*The above list is indicative; Concessionaire shall ensure that any additional equipment required for mandatory services are deployed in accordance with the requirement of each Phase.

SCHEDULE O: EXISTING FACILITY

a. Existing NMPA Hospital

NMPA Hospital has a capacity of 32 beds which may be increased in future. The New Mangalore Port Hospital was established in 1987. The existing 32 bedded hospital is spread over an area of 1.3 acres.

Following are the details of Existing infrastructure:

Existing Infrastructure	
Total Beds	32
Private Ward (One-bed rooms) – Male Ward + Female Ward + Children Ward	13
Deluxe Ward (Two – beds room)	1
Post-Operative Ward (three beds)	1
COVID Ward (Isolation rooms)	10 (10 beds)
OT	1
Doctor’s chambers	11

The hospital has 3 floors, with no basement available. The ground floor includes SBI and Canara bank on lease, in the same hospital complex. ~929 sqm of area is allocated to both the banks on the ground and first floor with separate entry to their respective buildings. Existing lease is valid for another 7 years (until Dec 2028).

Hospital has partial development on the ground and first floor along with complete second floor. Ground floor in hospital includes the administration section, waiting space, diagnostics (pathology), general OPD, orthopaedic OPD and Physiotherapy area along with emergency, trauma, triage and pharmacy section. The first floor comprises of OPDs for ENT, dental, and ophthalmology along with their respective doctor chambers, administrative office section, diagnostics (radiology & imaging services) and COVID rooms (unused isolation wards). The second floor includes the male, female and children wards along with special wards, post-operative ward, OT section and medical storeroom. Some rooms are currently vacant in the hospital. A detailed floor wise area statement has been given in the table below:

Area Statement (sqm)	
Ground Floor	~1,309
First Floor	~1,419
Second Floor	~1,401
Total	~4,128

b. Existing specialties and support services.

As per the IPHS norms, 25 services should be available at 30 bedded secondary healthcare hospital of NMPA. However, currently the hospital has only 9 services and departments including General Medicine, Accidents, emergency services & trauma care, general orthopedic, Ophthalmology, ENT, dental, physiotherapy, Ultrasound and ECG. NMPA hospital had closed their IPD since the COVID outbreak and the hospital currently does not provide ICU services. The below table represents the list of services to be available as per IPHS norms, the ones highlighted in red are currently available in NMPA hospital.

S. No.	Departments & facilities as per IPHS
1	General Medicine
2	General Surgery
3	Accidents, Emergency services & Trauma Care
4	General Orthopaedic
5	Obstetrics & Gynaecology
6	Paediatrics
7	Neonatology
8	Anaesthesia
9	Ophthalmology
10	ENT
11	Dental
12	DOT Centre
13	Radiology including Imaging services
14	Designated Microscopy Centre
15	AYUSH
16	Physiotherapy
17	X-Ray
18	Ultrasound
19	ECG

20	Blood Transfusion and storage
21	Geriatric Services*
22	Post-Partum Unit*
23	Dermatology and Venereology*
24	Critical care/ ICU*
25	Psychiatry*

OPD's are only available for 5 facilities (General medicine, general orthopaedic, ophthalmology, dental and ENT). For other tertiary healthcare services and treatment of unavailable services, patients are referred to empanelled hospital.

Apart from the Clinical services, NMPA hospital also has 4 non-clinical (Pharmacy, Triage, Ambulance and Nursing) and 3 ancillary services including laundry, sterilization, central warehouse and storage facility, office management, housekeeping and waste management.

c. List of Existing Equipment and Furniture

The below table represents the list of equipment and furniture currently available in NMPA hospital and would be transferred to the concessionaire without any additional charge:

S. NO.	NAME OF THE EQUIPMENT	QTY
1	ARI –VLU FOGGING MACHINE	1
2	SCHILLER MULTI PARAMETER PATIENT MONITOR	1
3	JANAKAMAKE LITHO TOMY STIRRUP	1 SET
4	SP2 17 SILICON CAPS FOR BRILLIANT	1 SET
5	SURGEON STOOL	1
6	JANAKA MAKE ANATHESIA RECOVERY COT WITH WHEEL SS	3
7	SURGICAL OPERATING MICROSCOPE BRILLIANT	1
8	PLANTEC OPHTALMIC O.T TABLE	1
9	FULLY S.S VERTICAL CYNDRICAL HP AUTOCLAVE 16"*14"	1
10	HEBBARS WARD DRESSING TROLLY WITH FOUR CASTER WITH PUSHED HANDLE	1
11	ENT HEAD LIGHT WITH BOLL POINT	1
12	WHEEL CHCAR	5
13	THERMAL SCANNER	1

14	MULTI PARAMONITOR	3
15	VENTILATOR H 170	1
16	DEFIBRILLATOR BPL	2
17	ECG MACHINE BPL	1
18	DIGITAL WEIGHING SCALE	2
19	CENTRAL OXYGEN SYSTEM	1
20	OXYGEN CYLINDER 1.5 cubic	10
21	GODREJ REFRIDGERATOR WITH SINGLE DOOR	3
22	FUMIGATION CHAMBER	1
23	FORMALIN CHAMBER	1
24	INSTRUMENT TROLLY	2
25	REVOLVING STOOL	2
26	CEALING O.T LIGHT	1
27	GLASS CABINET	2
28	FOCUSSING EXAMINATION LAMPWITH STAND ADJUSTABLE SET	1
29	NOISE LESS SUCTION APPEARATUS	1
30	KARL STORL LPROSCOPE FOR STERLIZARION	1
31	OPHTALMIC QUATRY	1
32	PEADIATRIC LARYNGOSCOPE	1
33	ADULT LARYNGOSCOPE	1
34	“SKANRAY” (L&T) MAKE BIPOLAR SURGICAL DIATHERMY (CAUTERY) INCLUDING ACCESSORIES	2
35	AUTO CLAVE HORIZONTAL	1
36	INFUSION PUMP	1
37	ICU BED	3
38	HABI'C (NYCOARD) READER	1
39	BIOCHEMISTRY ANALYZER	1
40	URINE ANALYZER LAURA.M.	1
41	(a) HEMATOLOGY ANALYZER WITH DESKTOP PC * S1000i (b) LASERJE PRINTER SL.MSYA 107405	1
42	QBC MICROSCOPE WITH CENTRIFUGE	1
43	BINOCULAR MICROSCOPE (LABMED)	1
44	HOTAIROVEN DIGITAL (AVILAB) 14*14	1
45	INCUBATOR DIGITAL (AVILAB) 14*14	1
46	E.S.R ANALYSER -20	1
47	CENTRIFUGE MACHINE	2
48	TOPCON AUTO REFRACTOR METER	1
49	TOPCON SLIT LAMP	1
50	PLANTECH OPHTHALMIC UNIT	1
51	OCULARE INSTRUMENT	1
52	TRIAL SET BALIWALA	2

53	COLOR DOPPLER ULTRA SOUND SCANNER SYSTEM	1
54	CHAMUNDI DENTAL CLINIC	1
55	SUCTION APPARTUS	1
56	SONOMED A SCAN MODEL 300 A	1
57	SURAJ KERATOMETER	1
58	INDIGENEOUS MECHANICAL TABLE FOR SURAJ KERATOMETER	1
59	REFRIGERATOR FF/432 LITER'S	1
60	INTERMITTENT TRACTION	1
61	SHOULDER WHEEL	1
62	WEIGHT CUFF SET	1
63	QUADRICEPS TABLE	1
64	DUMBBELLS IRON	1
65	INTRFERENTIAL THERAPY OLD	1
66	ULTRASOUND THERAPY OLD	1
67	ULTERSOUND THERAPY NEW	1
68	INTERFERENTIAL THERAPY NEW	1
69	SHORT WAVE DIATHERAMY	1
70	MOIST HEAT THERAPY	1
71	WAX THERAPY	1

The below table represents the list of equipment and furniture currently procured by NMPA hospital and would be transferred to the concessionaire in lieu of one-time payment of INR 26,97,175/-:

S. NO.	NAME OF THE EQUIPMENT	QTY
72	ERBA Bench Top Type Fully Automatic Bio Chemistry Analyzer	1
73	High frequency mobile X-Ray unit with computed Radiography system	1
74	Dental Chair, Dental Aerotor, Air Compressor etc.	1 SET
75	Haematology Analyser	1
76	Urine Analyser	1

SCHEDULE P: INDICATIVE FORMAT OF THE SUBSTITUTION AGREEMENT

[On Stamp Paper of appropriate value]

This SUBSTITUTION AGREEMENT is entered into on this [●] 2023

BETWEEN

BOARD OF TRUSTEES, for **NEW MANGALORE PORT AUTHORITY, MANGALORE**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at [●] represented by its [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns); and

[●], a private limited company incorporated under the provisions of the Companies Act 2013 with 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

[●] with its registered office at [●], [acting for itself and for and on behalf of the lenders listed at Annex hereto] (hereinafter referred to as the **Lenders**, which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes).

The Authority, Concessionaire and the Lenders are hereinafter collectively referred to as **Parties** and individually as **Party**.

WHEREAS:

- A. The Authority and the Concessionaire have entered into a concession agreement on [●] (the **Concession Agreement**), in terms of which the Concessionaire has agreed to undertake the operation, maintenance and management of the Existing 32 bedded Hospital and establish, upgrade, develop, finance and equip the 150 bedded multi-specialty hospital and the operation and maintenance thereof (the **Project**).
- B. With a view to facilitate obtaining financing for the Project by the Concessionaire and to enable the Concessionaire in construction and development of the Project pursuant to and in accordance with the Project Agreements, the Parties have agreed that, subject to the terms and conditions of the Project Agreements and the financing documents, the Lenders shall have the right to substitute the Concessionaire for the remaining Concession Period.
- C. Senior Lenders have agreed to finance the Project in accordance with the terms and

conditions set forth in the Financing Agreements.

- D, 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.
- E. 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.
- F. The Parties have agreed to execute this Substitution Agreement on the terms and conditions mentioned herein below.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Substitution Agreement are set out below:

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, 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 favour 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 favour 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 36 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.

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 shortlisting 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 favour 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 thereupon shall 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 Parties herein expressly agree to execute such agreement as shall be required to give effect to the substitution as contemplated herein. The Nominated Company shall also be under the obligation to grant to Authority (if so desired by Authority) the right to subscribe and acquire the Golden Share in the Nominated Company, as it had in the Concessionaire at time of substitution, on same terms and conditions as set forth in Shareholders 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 favour 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 33 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 Realisation 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 realisation 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.

5.4 Realisation of due amount by Authority

For realisation of the amount mentioned in Clause 6.3.9 of the Concession Agreement from Escrow Account, Authority shall be entitled to make its claim from the Escrow Account, without any recourse or reference to the Concessionaire and Concessionaire and Escrow Bank unconditionally consents to the foregoing, and Escrow bank shall promptly upon receiving related instructions debit the Escrow Account and make relevant payment to Authority in accordance with the provisions of the Concession Agreement read along with 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:

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

7 INDEMNITY

7.1 General indemnity

7.1.1 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 [●](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 venue of arbitration shall be [●] 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 at [●] 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 judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

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 authorised 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 authorised 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 Authorised representatives

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

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 HERETO HAVE SET THEIR HANDS AND SEAL TO THESE PRESENTS ON THE DAY, MONTH & YEAR FIRST ABOVE WRITTEN IN PRESENCE OF THE FOLLOWING WITNESSES:

SIGNED, SEALED & DELIVERED
For and on behalf of
the Authority

(Authorised Signatory)

For and on behalf of
(Concessionaire)

(Authorised Signatory)

For and on behalf of
(Lenders)

(Authorised Signatory)

Witnesses:

- 1.
- 2.

SCHEDULE Q: VESTING CERTIFICATE

- 1 **BOARD OF TRUSTEES, for NEW MANGALORE PORT AUTHORITY, MANGALORE** (the Authority) refers to the Concession Agreement dated [●] (the Agreement) entered into between the Authority and [●] (the Concessionaire) for the Project.

- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 34.1 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 on this [●] day of [●], 20[●] at [●].

AGREED, ACCEPTED AND SIGNED

**For and on behalf of
CONCESSIONAIRE**

by:

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

SIGNED, SEALED AND

**For and on behalf of
AUTHORITY by:**

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

In the presence of:

1.

2.

SCHEDULE R: ESCROW AGREEMENT

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [●] day of [●], [Year].

AMONGST

1. [●], a private limited company incorporated under the provisions of the Companies Act, and having its registered office at [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [●][name and particulars of Lenders' Representative] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [●] [name and particulars of the Escrow Bank] and having its registered office at [●] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES, for NEW MANGALORE PORT AUTHORITY, MANGALORE , a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [●] represented by its [●] (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**"), in terms of which the Concessionaire has agreed to undertake the operation, maintenance and management of the Existing 32 bedded Hospital and establish, upgrade, develop, finance and equip the 150 bedded multi-specialty hospital and the operation and maintenance thereof , 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 IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"**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 authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the 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

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 funds constituting the financial package
- (b) all Fee, deposits in all forms and any other 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 amount

- 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) any monies disbursed by the Authority to the Concessionaire;
- (b) Termination Payments.

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Fee 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) all payments relating to construction of the Project, subject to and in accordance

- with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs incurred by the Authority, in accordance with the provisions of the Concession Agreement and certified by the Authority as due and payable to it;
- (e) License Fee, Gross Revenue share and Lease Rent, as due and payable to the Authority
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this 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 on account of either party default

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) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding License Fee, Gross Revenue share and Lease Rent, as due and payable to the Authority;
- (d) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 35 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due excluding subordinate debt;
- (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 (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.2(A) Withdrawal upon end of Concession Period by efflux of time

All amounts standing to the credit of the Escrow Account at the end of the Concession Period by efflux of time shall be appropriated in the following order of priority:

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amounts due to the Authority and amounts payable towards transfer of the Project and Project Facilities by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;
 - (ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Authority; and
 - (iii) Vesting Certificate has been issued by the Authority under the provisions of Clause 34.4.

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 utilised 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 32 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 herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or

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

5.5 Regulatory approvals

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

5.6 Verification of Monthly Invoice:

The Escrow Bank shall verify Monthly Invoice for any apparent error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire. In the event that the Escrow Bank notifies any error in writing to the Concessionaire within 30 (Thirty) days of receipt of a Monthly Invoice, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Escrow Bank. The process set out in this Clause 5.6 shall then apply to any re-issued Monthly Invoice.

In the event that the Escrow Bank does not notify within 30 (thirty) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Escrow Bank and the Escrow Bank shall make the payment of the amounts claimed under such invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

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

- (c) Cure Period of 5 (five) business days; or
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 INDEMNITY

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 [●] (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 venue of arbitration shall be [●] 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 at [●] 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 judgement or award against it in any such proceedings to the giving of any relief or the issue of

any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

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 authorised 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 authorised 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 or 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 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto

shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

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 Board of Directors of the Concessionaire 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 / Authorised Officer who has countersigned the same in token thereof]§:

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

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

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE LENDERS by:

(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.

**Schedule S: Arbitration Rules of the Society for Affordable Redressal of
Disputes - Ports (SAROD-Ports)**

I N D E X

Rule

1. Scope of Application
2. Definitions
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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 SAROD-PORTS.

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, defence 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.
- 3.2 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.
- 3.3 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 of 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 alongwith 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 defence and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.
- 6.3 Within 30 days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence 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, defence 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 Thy 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, defence 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.
- 7.3 A 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 It the Respondent fails to submit a Statement of Respondent's Defence, 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 Defence 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 favours 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 as prescribed 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 New Delhi.
- 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 5PM 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 ail 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 time table 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 - (1) 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 or 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

- 35.1 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.
- 35.2 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 Defence 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.
- 35.3 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
- 35.4 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.
- 35.5 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.
- 35.6 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
- 35.7 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 Sate 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.