

CONCESSION AGREEMENT

between

BOARD OF TRUSTEES FOR NEW MANGALORE PORT TRUST
(The Concessioneing Authority)

and

CHETTINAD MANGALORE COAL TERMINAL PRIVATE LIMITED
(The Concessionaire)

for

**"MECHANIZATION OF BERTH NO. 12 FOR PROVIDING
EQUIPMENTS FOR HANDLING BULK CARGOES
AT NEW MANGALORE PORT"**

VOLUME - I

DATED 18TH MARCH, 2016



CONCESSION AGREEMENT

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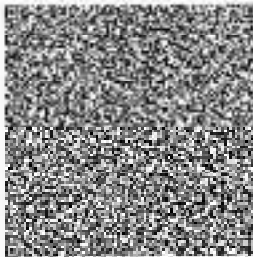


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INDIA NON JUDICIAL Government of Karnataka

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Certificate No.	: IN-KA195070417296800
Certificate Issued Date	: 18-Mar-2016 11:45 AM
Account Reference	: SHCIL (FI)/ ka-shcil/ SHCIL MANGALORE/ KA-DK
Unique Doc. Reference	: SUBIN-KAKA-SHCIL883280368618150
Purchased by	: CHETTINAD MANGALORE COAL TERMINAL PRIVATE LIMITED
Description of Document	: Article 12 Bond
Description	: AGREEMENT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: CHETTINAD MANGALORE COAL TERMINAL PRIVATE LIMITED
Second Party	: NEW MANGALORE PORT TRUST
Stamp Duty Paid By	: CHETTINAD MANGALORE COAL TERMINAL PRIVATE LIMITED
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

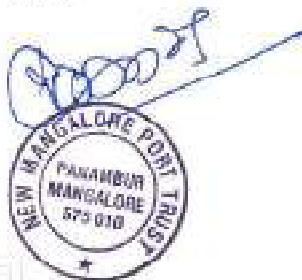



Authorized Signatory
For Stock Holding Corporation of India Ltd.

.....Please write or type below this line.....

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Mangalore on this the 18th day of March, 2016.



Disclaimer:

1. The authenticity of (this Stamp) Certificate should be verified at www.shcilstamp.com. Any other entry in the database on this Certificate will be available on the website remains it invalid.
2. The user of checking the legitimacy is on the part of the certificate.
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BETWEEN:

BOARD OF TRUSTEES for New Mangalore Port, a autonomous body constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Panambur, Mangalore – 575010, hereinafter referred to as **"the Concessioneing Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

Chettinad Mangalore Coal Terminal Private Limited, a company registered under the Companies Act, 1956/2013, and having its registered office at Rani Seethai Hall Building, 603, Anna Salai, Chennai – 600 006, hereinafter referred to as **"the Concessionaire"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

WHEREAS:

- (A) The Concessioneing Authority is desirous of implementing a Project (as defined hereinafter) for Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargoes at NMP through private sector participation on Design, Build, Finance, Operate and Transfer (the **"DBFOT"**) basis;
- (B) In 26th June, 2015 the Concessioneing Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project;
- (C) In response to the invitation referred to in recital 'B' above, the Concessioneing Authority received applications from 4 (four) parties including the application dated 18th August, 2015 submitted by the Consortium in accordance with the Request for Qualification;
- (D) The Concessioneing Authority, after evaluating all the applications, shortlisted 4 (four) number of applicants including the Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;
- (E) In response to the Request for Proposal, the Concessioneing Authority received 2 (two) proposals from the shortlisted applicants including the one submitted by the Consortium;
- (F) The Concessioneing Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Consortium and communicated its acceptance to the Consortium vide Letter of Intent for Award of Concession dated 9th February, 2016;



- (G) *Deleted*
- (H) The Consortium have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956/2013 to implement the Project;
- (I) Following the issue of the Letter of Intent for Award of Concession, the Concessions Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:



ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"Actual Project Cost" means the actual capital cost incurred by the Concessionaire on the Project and/or the Project Facilities and Services as certified by the Statutory Auditor and if the same exceeds the Estimated Project Cost and/or does not form part of the Financing Plan submitted prior to Financial Close, the amount of the Estimated Project Cost or in the Financing Plan as the case may be increased by the amount(s) approved in writing by the Concessioneing Authority.

"Additional Auditor" has the meaning ascribed to it in Article 9.4.

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

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

"Agreement" means this agreement as of date hereof, including Appendices 1 through 17 as may be amended, supplemented or modified in accordance with the provisions hereof.

"Appendix" means the schedules, supplements or documents, appended to this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.



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

"Applicable Tariff Guidelines" Shall have the same meaning ascribed to it in Article 8.1.

"Bid" means the proposal and the entire set of documents submitted by the Consortium in response to the RFQ and the RFP.

"Bid Security" means the Bank Guarantee No. 72/2015 of Indian Bank, Chennai dated 30.12.2015 furnished by the Consortium along with its Bid.

"Board" means the Board of Trustees of the New Mangalore Port.

"Book Value" means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessions Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessions Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 2013, as applicable from time to time.

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

"Change of Scope" shall have the meaning assigned to it under Article 6.8(a).

"Change of Scope Notice" shall have the meaning assigned to it under Article 6.8(b).

"Completion Certificate" shall have the meaning assigned to it under Article 6.3.

"Concession" means the Concession granted by the Concessions Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

"Concessions Authority Event of Default" shall have the meaning as set out under Article 15.1(b).



"Concessionaire Event of Default" shall have the meaning as set out under Article 15.1 (a).

"Concession Period" means the period of the Concession specified in Article 2.2 of this Agreement.

"Conditions Precedent" shall mean the conditions prescribed in Article 3 of this Agreement.

"Consortium" means the consortium consisting of (i) M/s. Chettinad Builders Private Limited, (ii) M/s. South India Corporation Private Limited, and (iii) M/s. Chettinad International Coal Terminal Private Limited formed, to implement the Project.

"Construction Phase" means the period from the Date of Award of Concession to the Date of Commercial Operation.

"Construction Works" means all works, equipments and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement.

"Construction Standards" means the construction standards set out in the annexure to Appendix 4.

"Consultation Notice" has the meaning ascribed to it in Article 15.3.

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

"Date of Award of Concession" means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

"Date of Commercial Operation" means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement/ MPT Act.

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

"Debt Due" means the aggregate of the following sums representing the amounts



advanced by the Lenders towards Actual Project Cost, expressed in Indian rupees as may be outstanding and payable to the Lenders under the Financing Documents on the Transfer Date:

- a) the principal amount of the debt including any subordinated debt provided by the Lenders under the Financing Documents for financing the Project ("the **Principal**") but excluding: (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment one year prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or any part of the Principal that had fallen due prior to the Termination Notice, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessions Authority; and
- b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above upto the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Lender.

"**Designs and Drawings**" means the designs and drawings, and other technical information submitted by the Concessionaire from time to time and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

"**Encumbrance**" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Port's Assets/Project Facilities and Services.

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

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

"**Equity**" means the paid up share capital of the Concessionaire representing the



equity component of the Actual Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

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

"Escrow Account" shall have the meaning assigned to it under Article 9.5.

"Escrow Agreement" means the agreement to be executed inter alia between the Concessionaire, the Concessions Authority and the Lenders/Lenders representative substantially in the format set out in Appendix 16 hereto.

"Estimated Project Cost" means the sum of Rs. 469,46,00,000/- (Rupees Four Hundred and Sixty Nine Crores and Forty Six Lakhs only) being the cost of the Project as estimated by the Concessions Authority and disclosed in the Request for Proposal.

"Event of Default" shall have the meaning assigned to it under Article 15.1.

"Exclusivity Period" shall have the meaning ascribed to it in Article 12.2(c).

"Expert" means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

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

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

"Financial Year" means any twelve month period commencing from 1st April and ending on 31st March.

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

"Financing Plan" means the financing plan as envisaged under the Financing



Documents for financing the cost to be incurred for implementing the Project submitted by the Concessionaire in accordance with Article 3.1(a)(vii).

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

“GoI” means the Government of India.

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

“Government Authority” means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Port’s Assets, the Project Facilities and Services or any portion thereof, but shall not include the Concessions Authority.

“Gross Revenue” means all the revenues chargeable by the Concessionaire from the Project /Project Facilities and Services.

“Independent Engineer” means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

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

“Insurance Cover” shall have the meaning ascribed to it in Article 12.1(e)(ii).

“Integrity Pact” shall mean an agreement entered into the Selected Bidder and the Authority and which shall be submitted as part of the bid in accordance with the terms and conditions of the RFP Document.

“Land Area” shall have the meaning assigned to it under Appendix 1.

“Lenders” means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Concessionaire to finance the Project.



"License Fee for Land Area" shall have the meaning assigned to it under Article 9.1.2(a).

"License Fee for Water Area" shall have the meaning assigned to it under Article 9.1.2(a).

"Management Contract" means the contract between the Concessionaire and the Management Contractor, in respect of obligations of the Management Contractor in respect of the Project in accordance with the Request for Proposal.

"Management Contractor"

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

"Material Adverse Effect" means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"Milestone Dates" means the dates for completion of specified Project activities as contained in the Project Schedule.

"Minimum Guaranteed Cargo" shall have the meaning ascribed to it in Article 7.1(a)(xii).

"Month" means the calendar month as per the Gregorian calendar.

"MPT Act" means The Major Port Trusts Act, 1963 as amended, supplemented, re-enacted or replaced from time to time.

"Non Political Event" means the Force Majeure Events set out in Article 14.2.

"O&M Contract" means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Agreement and shall include the Management Contract.

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



"Operations and Maintenance Standards" means the minimum standards of operations and maintenance set out in the annexure to Appendix 4 with regards the Project Facilities and Services.

"Other Events" means the Force Majeure Events set out in Article 14.4.

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

"Performance Standards" means the minimum standards of performance set out in Appendix 15 with regards the Project Facilities and Services.

"Performance Guarantee" shall mean the bank guarantee(s)/letter(s) of credit procured by the Concessionaire for the benefit of the Concessions Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

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

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in Appendix 2, belonging to the Concessions Authority.

"Port Limits" means the limits of New Mangalore Port as defined under Section 5 of the Indian Ports Act, 1908, as amended from time to time. Copy of gazette notification enclosed as Appendix-17.

"Project" means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement.

"Project Capacity" means the capacity of the Project Facilities and Services to handle 6.73 MMTPA of Coal and Other Cargo (fertilizer, limestone, gypsum and dolomite)

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



connection with the Project and Project Facilities and Services.

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

“Project Requirements” means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facilities and Services set out in Appendix 4.

“Project Schedule” means the Appendix 5 hereto.

“Project Site” means the area demarcated in Appendix 1 including the waterfront, existing berth, land and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

“Provisional Certificate” shall have the meaning assigned to it under Article 6.7 (d).

“Punch List” shall have the meaning assigned to it under Article 6.7 (d).

“Quarter” means a period of 3 (three) Months.

“Remedial Period” has the meaning ascribed to it in Article 15.4.

“Request for Proposal” or **“RFP”** means the Request for Proposal dated 14th October, 2015, issued by the Concessions Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessions Authority.

“Request for Qualification” or **“RFO”** means the Request for Qualification dated 26th June, 2015, issued by the Concessions Authority inviting applications in accordance therewith for shortlisting the competent applicants that can subsequently bid for the Project, and includes any addendum / clarifications issued in respect thereof by the Concessions Authority.

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

“Royalty” means the revenue share payable by the Concessionaire to the Concessions Authority, pursuant to Article 9.2 hereof.

“Safety Standards” means the minimum standards of safety set out in the annexure to Appendix 4 with regards the Project/Project Facilities and Services.



"Scale of Rates" means the scale of rates along with the statement of conditions with respect thereto framed from time to time and notified by TAMP or such other competent authority under the provisions of MPT Act, as applicable.

"Scheduled Project Completion Date" means the day following completion of 24 (twenty four) months from the Date of Award of Concession.

"Selectee" has the meaning ascribed to it in Article 15.4(b).

"Special Audit" shall have the meaning assigned to it under Article 9.4.

"Statutory Auditors" means a firm of chartered accountants appointed in terms of the Companies Act, 2013 and acting as the statutory auditors of the Concessionaire.

"Substitution Agreement" means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessions Authority, the Concessionaire and the Lenders.

"SBI BR" means the base rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

"TAMP" means Tariff Authority for Major Ports established under the MPT Act.

"Tariff" means the applicable rate(s) as per Scale of Rates that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"Tariff Notification" means the Notification/order No. TAMP/60/2015-NMPT, setting out inter alia the Tariff and shall include any amendments, revisions or replacement thereof carried out in accordance with the Applicable Tariff Guidelines.

"Termination Notice" means the termination notice issued pursuant to Article 16.1 hereof.

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

"Tests" shall have the meaning assigned to it under Article 6.7 (a) hereof.

"The Port" means New Mangalore Port.

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



or beneficial interest in the equity shares of the Concessionaire.

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

"Transaction Documents" means collectively the Project Contracts and the Financing Documents.

"Water Area" shall have the meaning assigned to it under Appendix 1.

1.2. Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard.

"CISF" means Central Industrial Security Force.

"DIN" means German Industrial Standard.

"FEM" means Federation of Equipment Manufacturers.

"IS" means Indian Standard.

"ISO" means International Standards Organization.

"IEC" means International Electro Technical Commission.

"IMDG" means International Maritime Dangerous Goods.

"IMO" means International Maritime Organization.

"km" means Kilometre, the unit of length.

"kWh" means Kilowatt-hour, the unit of electrical energy.

"KVA" means Kilovolt-Ampere, the unit of power.

"m" means Metre, the unit of length.

"mm" means Millimetre, the unit of length.

"MMTPA" means Million Metric Tonnes Per Annum, the unit of weight.

"MT" means Metric Tonne, the unit of weight.

"MVA" means Mega Volt Ampere, the unit of power.

"MSIHC" means Manufacture Storage and Input of Hazardous Chemicals.

"NMPT" means New Mangalore Port Trust

"OISD" means Oil Industry Safety Directorate.

"VAT" means Value Added Tax.

1.3. Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid documents, inter alia including the RFP and RFQ



documents, issued by the Concessing Authority and also including addendums, clarifications given in writing in the pre-bid meetings and the submissions of the Concessionaire and the bid submitted by the Concessionaire but not otherwise. In case of any contradictions in the terms of this Agreement and any such other bid documents as referred to above, the terms of this Agreement shall prevail.

In this Agreement unless the context otherwise requires:

- a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- d) the words "include" and "including" are to be construed without limitation;
- e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) any reference to month shall mean a reference to a calendar month;
- i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;



- k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and
- n) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.4. Measurements and Arithmetic Conventions

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

1.5. Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- c) between any value written in numerals and that in words, the latter shall prevail; and
- d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.



ARTICLE 2

CONCESSION AND PORT ASSETS

2.1. Concession

In consideration of the Concessionaire agreeing to pay to the Concessions Authority (a) the License Fee for Land Area (b) License Fee for Water Area and (c) Royalty, and performing its obligations as set out in this Agreement, the Concessions Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project/ Project Facilities and Services.

2.2. Concession Period

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

Provided that: -

- a) in the event of the Concession being extended by the Concessions Authority beyond the said period of 30 (thirty) years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and
- b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.

2.3. Acceptance of the Concession

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



2.4. Port's Assets

- a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessioneing Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Port's Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.
- b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Port's Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5. Use of Port's Assets

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

2.6. Information about Project Site and Port's Assets

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioneing Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioneing Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioneing Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioneing Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

2.7. Acceptance of the Port's Assets

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

- a) inspected the Project Site/ Port's Assets, including the berths and all structures thereat and its surroundings;
- b) satisfied itself as to the nature of the climatic, hydrological and general physical



conditions of the Project Site/ Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/ Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

- c) Obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8. Peaceful Occupation

The Concessions Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site and Port's Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Port's Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Port's Assets or any part thereof pursuant to Section 78 of the MPT Act, the Concessions Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.



ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the "Conditions Precedent"):

- a) The following Conditions Precedent shall be satisfied by the Concessionaire:
 - i. Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;
 - ii. Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
 - iii. Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
 - iv. Opening the Escrow Account and executing the Escrow Agreement;
 - v. Furnishing a copy of the Management Contract;
 - vi. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
 - vii. Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessions Authority under Article 3.1 (b) hereunder;
 - viii. Procuring and furnishing the following confirmations, in original, from the members of Consortium:
 - a. it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - b. it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;



- c. each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioneing Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- ix. Furnishing to the Concessioneing Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and
- x. Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.

b) The following Conditions Precedent shall be satisfied by the Concessioneing Authority:

- (i) procurement of the clearances required for the Project, as set out in Appendix 8; and
- (ii) Subject to furnishing of Performance Security by the Concessionaire in accordance with Clause 3.1(a)(i) above, handing over physical possession of the Project Site measuring about 25.15 hectares and/or the Port's Assets for the purposes of the Project. The Parties agree that the obligation of the Concessioneing Authority to hand over Berth No. 12, forming part of the Port's Assets under this sub-clause 3.1 (b) (ii), shall not include providing a designed dredged depth of 15.1 metres. Further, the Parties agree that the Port's Assets to be handed over under this sub-clause 3.1 (b) (ii) shall exclude handing over the Signal station (Vessel Traffic Management System (VTMS)) and the Sewerage Treatment Plant (STP), admeasuring about 0.75 hectares.

3.2 The aforesaid Conditions Precedent shall be complied with within 180 (one hundred and eighty) days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioneing Authority at any time in its sole discretion or the Concessioneing Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioneing Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.



- 3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessions Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessions Authority), the Concessions Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessions Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;
- 3.5 If the Concessions Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;
- 3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessions Authority, the Concessions Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.



ARTICLE 4

PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessions Authority an unconditional and irrevocable bank guarantee, in favour of the Concessions Authority encashable and enforceable at Mangalore, Karnataka substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessions Authority (the "Performance Guarantee"). The Performance Guarantee shall be for a sum of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only). Till such time the Concessionaire provides to Concessions Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessions Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) is available in immediate cash to the Concessions Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessions Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

- 4.2 The provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Security in case of a decision by the Concessions Authority to forfeit the same without assigning any reason for imposing sanction for violation of the Integrity Pact.



ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

- a) The Independent Engineer shall be selected through a tender process. The Concessions Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessions Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessions Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessions Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessions Authority and Persons against whom such objections are raised will at the discretion of the Concessions Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7.
- c) The costs and expenses of the Independent Engineer shall be borne by the Concessions Authority and Concessionaire, equally.
- d) If the Concessions Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessions Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.
- e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.



ARTICLE 6

PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

6.2 Review of the Designs and Drawings

- a) The Concessionaire shall submit the Designs and Drawings as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioneing Authority with a set of the Designs and Drawings.
- b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same (including taking into account the comments/observations of the Concessioneing Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.
- c) In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.
- d) If the Independent Engineer does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioneing Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.



- g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- h) Any review of the Designs and Drawings conducted by the Concessions Authority is solely for the Concessions Authority's own information and that by conducting such review, the Concessions Authority does not accept any responsibility for the same.
- i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessions Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof.

6.3 Construction Phase

The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of Project Facilities and Services in accordance with the provisions of this Agreement ("Completion Certificate") not later than 24 (twenty Four) months from the date of commencement of the Concession Period.

6.4 Obligations of the Concessionaire

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

- a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services;
- b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- c) give written notice to the Concessions Authority within 7 (seven) Days of any



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

- d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- e) provide to the representative(s) of the Concessions Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessions Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessions Authority nor shall the same be deemed to be waiver of any of the rights of the Concessions Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- f) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
- g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and
- h) ensure safe and timely construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion



within the period specified by the Independent Engineer.

6.5 Obligations of the Concessions Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessions Authority shall:

- a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement;
- c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;
- d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and
- e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.
- f) within 1 (one) year from the Date of Award of Concession, berth no. 12 will be provided with a designed dredged depth of 15.1 metres
- g) within 1 (one) year from the Date of Award of Concession hand over the Signal station (Vessel Traffic Management Solution (VTMS)) and the Sewerage Treatment Plant (STP) to the Concessionaire, admeasuring 0.75 hectares.
- h) provide a temporary right of way required by the Concessionaire for installation of conveying system.



6.6 Suspension of Works

- a) Upon recommendation of the Independent Engineer to this effect, the Concessions Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessions Authority, such work is not in accordance with the Construction Standards / Safety Standards.
- b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon represent to the Concessions Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessions Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

- a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards ("the Tests"). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessions Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;
- b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessions Authority copies of all Test data including detailed Test results;
- c) Upon completion of Construction Works and the Independent Engineer



determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a Completion Certificate substantially in the form set forth in Appendix 10;

- d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the "Provisional Certificate") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List") to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;
- e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

6.8 Change of Scope

- a) The Concessions Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement ("Change of Scope"). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% (five percent) of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Estimated Project Cost;



- b) If the Concessions Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the "Change of Scope Notice");
- c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessions Authority, the following:
- i) the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
 - ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;
- d) Upon receipt of the foregoing information, the Concessions Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessions Authority does not disagree with the cost assessment of the Concessionaire, the Concessions Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessions Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessions Authority may issue an order to implement the Change of Scope;
- e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessions Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessions Authority bills for payment in respect of



the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Werks or procuring equipments following an order for a Change of Scope;

- g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioneing Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioneing Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and
- h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioneing Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8 (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioneing Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a



specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessions Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Estimated Project Cost, the Concessions Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessions Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.



ARTICLE 7

OPERATIONS & MAINTENANCE

7.1 (a) Obligations of the Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) Berth and Terminal Operations:

Mechanization of Berth No. 12 for providing equipments for handling bulk cargoes at New Mangalore Port

The Concessionaire shall:

- a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioneing Authority as ready for operations;
- b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;
- c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;
- d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;
- e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions;
- f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioneing Authority or other agencies;
- g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;



- h) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services;
- i) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned there from;
- j) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;
- k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioneing Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and
- l) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) Repairs and Maintenance

The Concessionaire shall at its own cost:

- a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipments; and
- b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioneing Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iii) Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Project Requirements, at all times during the Concession Period.



(iv) Repairs, Replacement or Restoration

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

(v) Removal / Replacement of Assets

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

(vi) Payments to the Concessioneing Authority

The Concessionaire shall make/ensure payments to the Concessioneing Authority as per Article 9.

(vii) Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioneing Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioneing Authority provide the authorized representatives of the Concessioneing Authority access to the Port's Assets/the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioneing Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

(viii) Reports

The Concessionaire shall provide to the Concessioneing Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, transit storage dwell time, turnaround time for receipt/delivery operations, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting, within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioneing Authority



may require from time to time. If so desired by the Concessions Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessions Authority and its representatives.

(ix) Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessions Authority may specify from time to time.

(x) Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site/ Port's Assets and with respect to the Project Site. The Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessions Authority or a Government Authority from time to time. It shall also conform to and assist the Concessions Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("ISPS Code") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

(xi) Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

Further, the Concessionaire shall comply with the requirements of employing the existing personnel/ labour as agreed to and set out in Appendix II. All labour law compliances shall be that of the Concessionaire alone.

(xii) Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the Concessions Authority annual cargo handling of the levels set out in Appendix 14 ("Minimum Guaranteed Cargo") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.

(xiii) Indemnity Against Claims for Loss of Goods



Notwithstanding anything contained in the MPT Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "Action") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessions Authority, its officers, employees, agents and representatives (the "Indemnities") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnities(s) shall be forwarded to the Concessionaire expeditiously and in any case within 15 (fifteen) days of the receipt thereof by any of the Indemnities. Provided further that the Indemnities shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnities in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnities in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnities and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnities shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

(xiv) Deleted

(b) Rights of Concessionaire

(i) Preferential and Priority Berthing

The Concessionaire may offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities and Services. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the Parties in accordance with Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any.

(ii) Unclaimed cargo

The Concessionaire may at its cost:

(a) after obtaining prior written approval of the Commissioner of Customs or



other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and always subject to provisions of MPT Act and other laws in this regard.

- (b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessions Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

(c) Obligations of the Concessions Authority

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

(i) Marine and Port Services

The Concessions Authority shall provide/ cause to be provided, to the Concessionaire, the following services:

- (a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions.
- (b) Maintain the present depth available at the common user approach channel and lagoon of the port for vessels upto draft of 14 m, except during monsoon months where normal siltation in the approach channel and lagoon is expected;
- (c) waterside safety and safety of navigation;
- (d) Maintenance of the dredged draft alongside the berth at 14 m except during monsoon months where normal siltation is expected. The maintenance dredging will be carried out as per the pre scheduled programme of Port maintenance dredging.
- (e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the project facilities and services
- (f) provision and maintenance of all general port infrastructure other than



those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

- (g) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and
- (h) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.

(ii) Approvals

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

7.2 Utilities and Services

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

- (a) the power made available shall be as received by the Concessions Authority from Mangalore Electricity Supply Company. The take off point for electricity shall be from the substation at Bykampady and the concessionaire shall make arrangements for take-off of the power from the sub-station at Bykampady.
- (b) The concessionaire shall make water available from Mangalore City Corporation from the nearest available water line and the Concessionaire shall make arrangements for take-off of water from the nearest available water line.
- (c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessions Authority, install meters to measure the consumption of power and water. The Concessions Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;
- (d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining



Applicable Permits, if any, therefor.

7.3 Liability for shortfall in performance

In the event the Concessions Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessions Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 15 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessions Authority which shall be considered by the Concessions Authority on merits and the Concessions Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

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



ARTICLE 8

TARIFF

8.1 Applicable Tariff Guidelines

- 8.1.1 Applicable Tariff Guidelines means the guidelines for determination of tariff for projects at Major Ports in vogue on the date the Concession Agreement is signed. However, in the event the said tariff guidelines are either amended, revised or replaced by a fresh set of tariff guidelines at any time during the Concession Period, such amended, revised or fresh set of tariff guidelines, as the case may be, shall be the Applicable Tariff Guidelines, provided the Concessionaire exercises an option to recover Tariff under such amended, revised or fresh set of tariff guidelines within a period of 30 days from the date of its publication in the Official Gazette.

8.2 Levy and Recovery of the Tariff

- 8.2.1 The Concessionaire shall be entitled to recover Tariff from the users of the Project Facilities and Services as per the Tariff Notification, an extract of which is set out in Appendix 12. The Tariffs shall be revised in the manner set out in Appendix 12 and duly notified from time to time by the TAMP under Sections 48, 49 and 50 of the MPT Act or such other competent authority under the Applicable Laws. The Tariff Notification prescribes the maximum Tariff that can be levied by the Concessionaire and the Concessionaire may charge lower than the rates prescribed. The Concessionaire shall, subject to Article 8.2 hereunder, deposit all Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Concessionaire or of any other person.

8.3 Collection of Cesses and Charges

- 8.3.1 The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as may be requested by the Concessions Authority, on behalf of the Concessions Authority and remit the same to the Concessions Authority. Provided, the Concessionaire shall be duly authorized by the Concessions Authority or such other authority as may be competent in this regard, for the purpose of such collection.



ARTICLE 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 Payments towards Project Site including Port's Assets

9.1.1. Deleted

9.1.2 License Fee

- a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority;
- i. the Licence Fee for Land Area (the "License Fee for Land Area"), to be calculated as provided below:

$$\text{Licence Fee for Land Area} = A \times B$$

where,

A = the extent of Land Area handed over pursuant to this Agreement, in square metres

B = Licence Fee per square metre per year, derived with 2% annual increment (compounded) corresponding to the Base Licence Fee of Rs. 19.21 per sq. metre per month as on the base date of 20th February 2012. For avoidance of doubt, B shall be equal to Rs. 20.39 per Sq metre per month for the period between February 2015 and February 2016.

Provided further, that a surcharge of 10% shall be applicable for the custom notified areas, in addition to the amount determined herein.

- ii. the Licence Fee for Water Area (the "License Fee for Water Area"), to be calculated as provided below:

$$\text{Licence Fee for Water Area} = A \times B$$

where,

A = the extent of Water Area handed over pursuant to this Agreement, in square metres



B = Licence Fee per square metre per year, derived with 2% annual increment (compounded) corresponding to the Base Licence Fee of Rs. 9.61 per sq. metre per month as on the base date of 20th February 2012. For avoidance of doubt, B shall be equal to Rs. 10.195 per Sq metre for the period between February 2015 and February 2016.

Provided further, that a surcharge of 10% shall be applicable for the custom notified areas, in addition to the amount determined herein.

Such amount shall be paid by the Concessionaire to the concessioning authority latest by 15th April of the respective year for 12 months period in advance. The first of such payment to be made on within 15 days from the Date of Award of Concession

- b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI BR plus 2% (two percent) per annum on the amount outstanding.

9.2 Payments of Royalty

- a) The Concessionaire shall pay to the Concessioning Authority Royalty per Month equivalent to 31.0% (Thirty one point zero percent) of the Gross Revenue chargeable by the Concessionaire from the Project / Project facilities and Services ("the Royalty"),
- b) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferrals, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue. Further, in computing the Gross Revenue, income from interest, sale of assets, amounts received by the Concessionaire by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and cesses in respect to the Project Facilities and Services, if any collected and paid to any Government Authority shall also be ignored.
- c) Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.
- d) The payment of Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services, and shall be irrespective of Date of Commercial Operation.



- e) Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI BR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

9.3 Utilities or Services

The Concessionaire shall also pay rent or other charges for any premises (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessions Authority to the Concessionaire in accordance with the terms, conditions and covenants including on payment of rates specified by the Concessions Authority. Such rates shall be twice the Scale of Rates as may be notified by the competent authority in respect thereof from time to time (the present rates applicable in respect of land, utilities and services are set out in Appendix 13).

9.4 Certified Accounts

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

The Concessions Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "Additional Auditor") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessions Authority and report to the Concessions Authority such information as may be desired by the Concessions Authority for any period and the Gross Revenue ("Special Audit").

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Royalty on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @ SBI BR plus 2% (two percent) on the difference between the Royalty paid by the Concessionaire based on the Gross Revenue reported by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening



period between the payment of the Royalties as above. Further the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the Concessioneing Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5 Escrow Account

The Concessionaire shall maintain an escrow account with a bank approved by the Lenders ("**Escrow Account**"), during the subsistence of this Agreement and enter into an agreement substantially in the format prescribed in Appendix 16 with such bank to ensure that all proceeds for financing the Project and all revenues and other receipts arising from the Project and under any agreements, including this Agreement received by the Concessionaire are deposited into such Escrow Account. Provided, the Concessionaire shall not deposit any amounts including the cesses and duties collected by it from the users on behalf of the Concessioneing Authority or such other authority in accordance with Article 8.2 hereof or pursuant to any other instructions in respect thereof in the Escrow Account and shall deposit the same in a separate account dedicated for the same and maintained by it in trust for the Concessioneing Authority or such other authority.

- a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority:
 - i. for all taxes due and payable by the Concessionaire;
 - ii. towards payment of License Fee;
 - iii. all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
 - iv. all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
 - v. towards its debt service obligations under the Financing Documents;
 - vi. towards payment of Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
 - vii. towards any reserve requirements in accordance with the Financing Documents;



and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Concessionaire in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Concessions Authority and the Lenders.

- b) All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 shall be appropriated in the following order of priority:
- i. towards taxes and statutory dues payable by the Concessionaire;
 - ii. compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
 - iii. all amounts due to the Concessions Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

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

c) Deleted



ARTICLE 10

ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

a) Land and Water Area

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

b) Assets created or provided by the Concessionaire

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

10.2 Permitted Charge on Assets

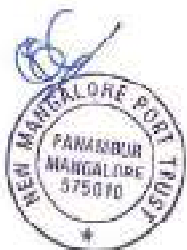
The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the Port's Assets.

Provided further, in the event of Termination of this Agreement, the said charge shall



stand extinguished upon payment of compensation by the Concessing Authority to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.



ARTICLE 11

SHAREHOLDING

11.1 Ownership Structure

The Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire are as below.

1. Chettinad Builders Private Limited: 64 %
2. South India Corpn Private Limited: 10 %
3. Chettinad International Coal Terminal Private Limited: 26 %

11.2 Shareholding

The Concessionaire shall ensure that the members of the Consortium maintain Management Control at least until expiry of the Exclusivity Period as also maintain their equity holding in the Concessionaire such that:

- a) The members of the Consortium legally and beneficially hold not less than 51% (fifty one percent) of its paid up equity capital until 3 (three) years after Date of Commercial Operations and not less than 26% (twenty six percent) of its paid up equity capital during the balance Concession Period; and
- b) M/s Chettinad Builders Private Limited ("Lead Member") legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium's holding in the paid up equity capital of the Concessionaire.

Notwithstanding the aforesaid, any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessions Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.

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



the Financing Documents.

11.3 Constituent Documents

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

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessions Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessions Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.



ARTICLE 12

GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

a. Applicable Permits

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

b. Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

c. Insurance

(i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- a) builder's all risk insurance;
- b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- c) comprehensive third party liability insurance including injury or death to personnel of the Concessions Authority and others who may enter the Project Site or the Port's Assets;
- d) workmen's compensation insurance;
- e) marine cum storage cum erection insurance; and

f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessions Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value)



including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("Insurance Cover").

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioneing Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioneing Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessioneing Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioneing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioneing Authority therefor shall be reimbursed with interest @ SBI BR plus 2% (two percent) per annum by the Concessionaire



forthwith on demand, failing which the same shall be recovered by the Concessioneing Authority by exercising right of set off or otherwise.

(vi) Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessioneing Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

d. Indemnification

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

e. Assignability

Except as otherwise provided in this Agreement, the Concessioneaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without



prior written consent of the Concessing Authority.

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

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

f. Engagement of Contractors

The Concessionaire shall engage the Management Contractor and execute the Management Contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the Project Facilities and Services in the manner envisaged under the Request for Proposal¹. A copy of the Management Contract shall be provided to the Concessing Authority and the same shall not be amended, substituted or revoked without the prior written consent of the Concessing Authority.

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

Provided:

- i. the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;
- ii. the Concessionaire should have obtained requisite security clearance for the Contractor the Concessionaire intends to engage;

¹This may be added in cases where the project has been awarded on the strength of the Management Contractor.



- iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioneing Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- iv. any contract that it enters with an Affiliate in respect of the Project shall be on an arms length basis.

g. Condition Survey

- i. The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioneing Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioneing Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- ii. The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioneing Authority a guarantee issued by a Nationalised bank/ scheduled bank in India for a sum of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessioneing Event of Default and the Concessioneing Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

12.2 Of the Concessioneing Authority

a. Assistance in obtaining Approvals, Permits and Licenses

The Concessioneing Authority shall, at the written request of the Concessionaire, but without guarantees and/or without assuming any responsibility in that behalf,



issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

b. Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Port's Assets payable to the State Government or any statutory authority shall be met and paid by the Concessions Authority.

c. Competing Facilities

The Concessions Authority shall not operationalise any existing/ additional facilities within port limits for handling Coal either on its own or through any other person until the earlier of (i) 5(five) years from the Scheduled Project Completion Date; or (ii) the average annual volume of cargo handled at the project facilities and services reaches a level of 75% (seventy five percent) of project capacity for 2 (two) consecutive years (Exclusivity Period). Provided, this restriction shall not apply to the existing captive facilities of M/s. UPCL.

d. General rights of inspection and verification

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

12.3 Of the Concessions Authority and the Concessionaire

(a) Compliance with Laws and Regulations

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

(b) Rights to Documents

i. Concessions Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessions Authority to the Concessionaire, shall always remain the property of the Concessions Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof



shall, unless otherwise agreed upon by the Concessing Authority, be returned by the Concessionaire to the Concessing Authority on the Transfer Date.

ii. Concessionaire's Documents

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by the Concessionaire to the Concessing Authority free of cost on the Transfer Date.

iii. Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

iv. Obligation to Cooperate

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

v. Substitution Agreement

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessing Authority of the Lenders' readiness to execute the same.



ARTICLE 13

CHANGE IN LAW

13.1 Change in Law

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

- a) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- b) the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or
- c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iv) any rules or regulations stipulated by TAMP or other regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

13.2 The Concessionaire's Remedy

- a) In the event of Change in Law the Concessionaire may propose to the Concessioneing Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. Provided however, that



if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, where upon the provisions with respect thereto shall apply.

- (b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) may at the option of the Concessions Authority be borne by the Concessions Authority. It is clarified that Additional Cost upto Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) in any accounting year shall be borne by the Concessionaire;
- (c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessions Authority, of the following:
- i. the particulars, nature and the impact of Change in Law on the Project;
 - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
 - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article (c), the Concessions Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.
- e) If it is determined that the only material impact of a Change in Law is Additional Cost and the Concessions Authority opts to compensate the same in accordance with the preceding sub-article (b), the Concessionaire shall not be entitled to any other remedy nor shall seek any alterations to the Agreement and the Concessions Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessions Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:



- i. by lump-sum reimbursement of such Additional Cost to the Concessionaire;
- ii. reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI BR + 2% (two percent) on the amount the payment of which is deferred.

Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2;

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) in any Financial Year, the Concessionaire shall notify the Concessions Authority and pay to the Concessions Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessions Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit.

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



ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure Event

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

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

14.2 Non-Political Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);
- b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;



- d) the discovery of geological conditions, toxic contamination or archeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

- a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;
- b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound;
- c) early determination of this Agreement by the Concessioneing Authority for reasons of national emergency, national security or the public interest;
- d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

Any of the following events which prevents the Affected Party from performing any of its obligations under this Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

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



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

14.5 Notice of Force Majeure Event

- a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- b) The Notice shall inter-alia include full particulars of:
 - i. the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - ii. the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - iii. the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - iv. any other relevant information.
- c) So long as the Affected Party continues to claim to be affected by a Force Majeure



Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or
- b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8 Performance Excused

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

14.9 Costs, Revised Timetable

a. Costs

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

b. Extension of time/period



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

14.10 Termination Due to Force Majeure Event

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



ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

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

a. The Concessionaire Event of Default

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

- i. the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- ii. construction at the Project Site is abandoned for more than 90 (ninety) Days during the Construction Phase;
- iii. a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- iv. Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- v. the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- vi. A default under the Management Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- vii. the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;



- viii. any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- ix. the Concessionaire passing a resolution for voluntary winding up;
- x. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- xi. occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- xii. levy of an execution or restraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days;
- xiii. the Performance Guarantee is not maintained in terms of the provisions hereof;
- xiv. the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- xv. a change in shareholding such that the beneficial interest of the Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- xvi. amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking other than transfer of assets in the ordinary course of business in contravention with the provisions of Article 11 hereof; and
- xvii. the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.



b. The Concessing Authority Event of Default

- i. the Concessing Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- ii. any representation made or warranties given by the Concessing Authority under this Agreement is found to be false or misleading.
- iii. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).
- iv. levy of an execution or restraint on the Port's Assets in any proceedings against the Concessing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

- a) Upon the occurrence of the Concessionaire Event of Default, the Concessing Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- b) Upon the occurrence of the Concessing Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

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

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("Consultation Notice").



15.4 Remedial Process

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

- a) the change of management or control/ownership of the Concessionaire;
- b) the replacement of the Concessionaire by a new operator ("Selectee") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :
 - i. the criteria for selection of the Selectee;
 - ii. the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;
 - iii. handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;
 - iv. acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;
 - v. acceptance by the Selectee of any amounts due to the Concessioneing Authority from the Concessionaire under this Agreement; and
 - vi. payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

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



15.6 Revocation of Consultation Notice

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

15.7 Termination due to Events of Default

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

15.8 Concessioneing Authority's Rights of Step-in

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

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

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



ARTICLE 16

TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

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

16.2 Obligations during Termination Period

During Termination Period, the Parties shall, subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3 Requisition

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

- a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;
- b) data or records including Test Certificates, Survey Reports, Inspection Reports, Records of Maintenance, Statutory Certificates issued for Operation and Establishment of the Project Facilities and Services and regarding the operation



and maintenance of the Project Facilities and Services;

- c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and
- d) any other information or records regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

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

16.4 Condition Survey

- a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessions Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessions Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Concessions Authority on the Transfer Date.
- b) If, as a result of the condition survey, the Concessions Authority shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessions Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessions Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

16.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or



under any law:

- a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;
- b) the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessions Authority by the Concessionaire.

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



ARTICLE 17

COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

- i. If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.
- ii. If the termination is due to a Other Event compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.
- iii. If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioneing Authority Event of Default under Article 17.1 (c).

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

(b) Termination due to Concessionaire Event of Default

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

- (i) the Book Value;
- (ii) 90% (ninety percent) of Debt Due;
- (iii) the Actual Project Cost;

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



(c) Termination due to Concessioneing Authority Event of Default

If the termination is due to a Concessioneing Authority Event of Default, the compensation payable by the Concessioneing Authority shall be equal to the aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

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

17.3 Transfer Fee and Charges

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of this Agreement shall be borne by:

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

17.4 Payment of Compensation to Lenders

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



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

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

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioneing Authority fails to pay the compensation on the Transfer Date, the Concessioneing Authority shall be liable to pay interest @ SBI BR plus 2% (two percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioneing Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioneing Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioneing Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioneing Authority the Gross Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioneing Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioneing Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioneing Authority is delayed for reasons attributable to the Concessioneing Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioneing Authority. Provided however, the Concessionaire shall be liable to pay Royalty in accordance with Article 9.2.



17.7 Remedies Cumulative

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



ARTICLE 18

TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

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

18.2 Concessionaire's Obligations

The Concessionaire shall:

- (a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- (b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (c) hand over to the Concessions Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- (d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;
- (e) transfer or cause to be transferred to the Concessions Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessions Authority; and (iii) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessions Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessions Authority;
- (f) at its cost, transfer to the Concessions Authority all such Applicable Permits



which the Concessions Authority may require and which can be legally transferred. Provided if the termination is on account of Concessions Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessions Authority;

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

18.3 Concessions Authority's Obligations

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

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

18.4 Risk

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



ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessioneing Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

19.2 Assistance of Expert

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

19.3 Arbitration

a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.



b) Place of Arbitration

The place of arbitration shall be the headquarters of the Concessing Authority in India.

c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d) Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

f) Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

g) Performance during Arbitration

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.



ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

- a. it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d. this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;
- e. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;
- f. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;



- i. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- j. all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessions Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- k. no representation or warranty by it contained herein or in any other document furnished by it to the Concessions Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessions Authority in connection therewith;
- m. agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and
- n. consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

20.2 Representations and Warranties of the Concessions Authority

The Concessions Authority represents and warrants to the Concessionaire that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;



- c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d) this Agreement constitutes the legal, valid and binding obligation of the Concessional Authority, enforceable against it in accordance with the terms hereof; and
- e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

20.3 Disclosure

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



ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is -0.95m below mean sea level.

21.2 Survival of Obligations

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Concession Period/ termination of this Agreement.

21.3 Articles to survive Termination

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

21.4 Joint Responsibility

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

21.5 Several Obligations

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



21.6 Severability

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

21.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessions Authority:

CHAIRMAN
NEW MANGALORE PORT TRUST
PANAMBUR, MANGALORE,
KARNATAKA – 575010
Fax No: +91-824-2408390
Email: chairman@nmpt.in

The Concessionaire:

DIRECTOR
CHETTINAD MANGALORE COAL TERMINAL PVT. LTD.
603, ANNA SALAI,
CHENNAI – 600 006
TAMIL NADU, INDIA
Fax No. +91-44-42988669
Email: suresh-cibt@chettinad.com



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

21.8 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.9 Amendments, Modifications or Alterations.

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

21.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Republic of India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Agreement.

21.11 Entire Agreement

This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement and the Appendices, by reference or otherwise, are abrogated and withdrawn.





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


Signed and delivered for and on behalf of the
Board of Trustees for New Mangalore Port Trust,
the Concessioneing Authority.

The Common Seal of the Concessioneing Authority
is affixed pursuant to the resolution dated 8th February, 2016,
vide Resolution No.121/2015-16 of the New Mangalore Port Trust Board in the
presence of Mr. P. C. Parida, Chairman, New Mangalore Port Trust
who has signed this Agreement in token thereof.

Witness

1. 
(SURESH P. SAIRWADKAR)
BY: CHAIRMAN


अध्यक्ष / CHAIRMAN
नव मंगलूर पोर्ट ट्रस्ट
New Mangalore Port Trust
पणजी Panambur-575010

2. 
M. R. Hedaru
(C. Secy)


Signed and delivered for and on behalf of
M/s Chettinad Mangalore Coal Terminal Pvt. Ltd., the Concessionaire.


The Common Seal of the Concessionaire is
affixed pursuant to the resolution No. 7/1/2015-16 dated 4th March, 2016,
of its Board of Directors in the presence of
Mr. N. Suresh, Director, M/s Chettinad Mangalore Coal Terminal Pvt. Ltd.,
who has signed this Agreement in token thereof.

Witness

1. 
(E. DANIEL JOTHIKUMAR)
D.G.M

For Chettinad Mangalore Coal Terminal Pvt. Ltd.


N. SURESH
Director

2. 
HARI NATH A.Y
D.Y. CEIL

APPENDIX 1

PROJECT SITE

1. The Port of New Mangalore, one of the modern Ports of India commissioned in 1975 and one among the twelve major ports in India.
2. It is situated in Karnataka state, and lies between the major ports of Cochin and Mormugao Ports.
3. It is located at Panambur, Mangalore at latitude 12° 55' North and Longitude 74° 48' East and at a distance of about 191 nautical miles north of Cochin Port and 170 nautical miles south of Mormugao Port.
4. The Port has entrance channel of 7.5 km in length and 245 meter wide and the channel is dredged to a depth of 15.4 meters. The tidal variation at Mangalore is around 1.7 meters.
5. The proposed Project Site for "*Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargoes at NMP*" is located within the harbour basin on west of the Western Dock arm. The storage area and railway marshalling yard are located on the Western side and northern side of the berth No.12 respectively. The Layout Plan of the Port is marked as Drawing No.1 attached to Appendix 1.
6. The salient features of the Berth have been furnished here for selection of mobile ship loaders/ unloaders or cranes. The berth structure is not licensed under the subject project. The salient feature of Berth No.12 are as follows:-
 - a) Length of the Berth 325 Metres
 - b) Designed Dredged depth 15.1 Metres
 - c) Design Ship size 80,000-100,000 DWT
 - d) Width of R.C.C. Deck- 25 Metres
 - e) The Berth is provided with provisions for rails, 20 M c/c, for Coal mobile ship loaders / unloaders or cranes
7. The project storage area is located behind the Berth No. 12 Parallel to the berth face towards west. The total area ("*Land Area*") available is to the extent of 25.90 Hectares as marked in Drawing No. 2 attached to Appendix 1. Out of which, 19.60 and 1.80 hectare has been earmarked for Coal and Other Cargo respectively; 0.50 Hectare is made available for providing the conveyor system and the remaining 4.00 Hectares is provided for mechanized railway loading including railway track.



8. The Loading facilities at railway yard are in the existing Panambur Marshalling Yard located at northern side of Berth No. 12 at a distance of 2 kms approximately. The area available for loading facility at marshalling yard is 40,000 sqm. The Port has a railway network in the Marshalling Yard. The project requirement envisages yard planning of the subject Project within the area available. The inward and outward entry of train can be connected to existing Port railway tracks at specified locations on southern or northern end of the marshalling yard. The drawing showing the availability of area in the Marshalling Yard and the existing rail tracks is shown in Drawing No. 3 attached to Appendix 1.
9. The area proposed to be made available for setting up the facilities :-

Location	Area (in Sqm)	Description
Panambur Marshalling Yard	40,000	Total area of 4.00 Ha (approximate) <i>as shown in Drawing No 3</i>
Backup area of Berth No. 12 for Coal cargo	1,96,000	An area of 19.60 Ha (approximate) <i>as shown in Drawing No 2</i>
Backup area of Berth No. 12 for Other Cargo	18,000	An area of 1.80 Ha (approximate) <i>as shown in Drawing No 2</i>
Right of way for conveying system (500m x 10m)	5,000	Right of Way (RoW) from Marshalling Yard to Berth <i>as shown in Drawing No 2.</i> Generally 10 M width & wherever junction tower exists, extra width will be allotted
Total Area	2,59,000	

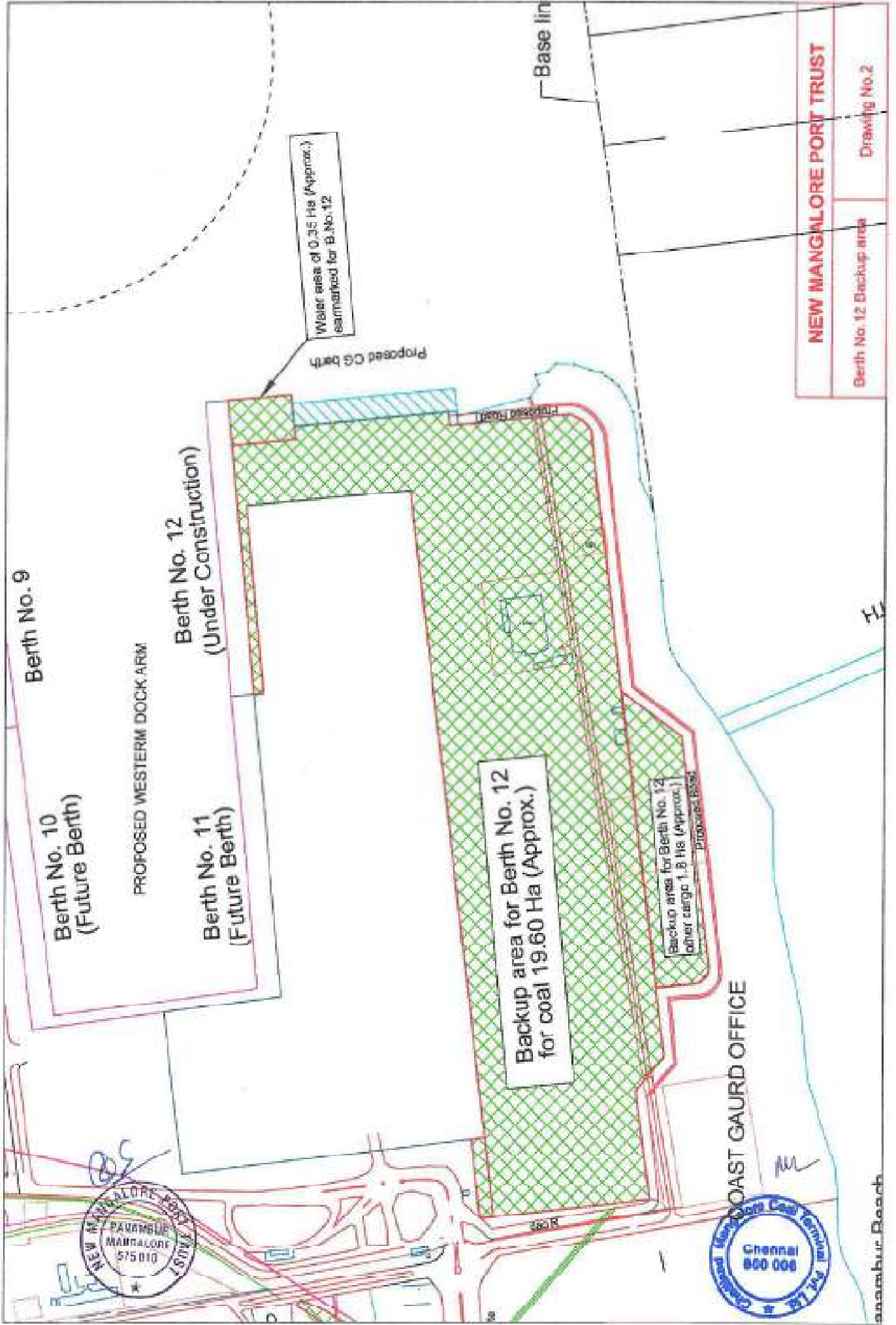
10. Water area between Berth No. 12 and proposed Coast Guard berth towards south admeasuring about 3500 sq mt. ("Water Area").
11. The marshalling yard and the storage yard can be connected by conveyor system. The area allotted will be based on right of way. The alignment of the conveyor shall be as per the existing site conditions.
12. The connectivity of roads to the marshalling yard is directly from the Port internal roads and the road on the western side parallel to the marshalling yard. The road connectivity to the storage yard (within custom notified area) behind berth No. 12 will be from KK Gate, Silver Jubilee Gate or U.S. Mallya Gate from the Port internal roads as shown in the Layout Plan of the Port (Drawing No. 1).
13. The outlets of drains within the proposed yard shall be connected to the existing cross drains in the railway marshalling yard. The drain outlets from the proposed storage yard shall be connected to the existing drains adjacent to the Concessionaire's area.



14. The Work Shop Godown, Railway Platforms & Railway Lines within the project site will be handed over to the concessionaire in accordance with Clause 3.1 (b), while the Signal station (Vessel Traffic Management Solution (VTMS)) and the STP would be handed over to the concessionaire in accordance with Clause 6.5 (g).
15. The Port Railway Marshalling Yard has 6 BG lines of 60 wagons capacity each. This railway line is connected to Konkan Railway and Southern Railway which includes the Bangalore - Hassan - Mangalore Railway network. The Licensee has to provide a conveyor system, BG track with Wagon Loader and engine escape line. Land for accommodating above is available in the Marshalling Yard next to the UPCL railway lines.
16. The power made available shall be as received by the Concessioning Authority from Mangalore Electricity Supply Company. The take off point for electricity shall be from the substation at Bykampady and the concessionaire shall make arrangements for take-off of the power from the sub-station at Bykampady;

Enclosures:- Drawing No. 1, 2 & 3





Berth No. 9

Berth No. 10
(Future Berth)

PROPOSED WESTERN DOCK ARM

Berth No. 12
(Under Construction)

Berth No. 11
(Future Berth)

Water area of 0.35 Ha (Approx.)
earmarked for B.No.12

Proposed CG berth

Backup area for Berth No. 12
for coal 19.60 Ha (Approx.)

Backup area for Berth No. 12
for other cargo 1.8 Ha (Approx.)

Proposed Road

Base line

EAST GAURD OFFICE

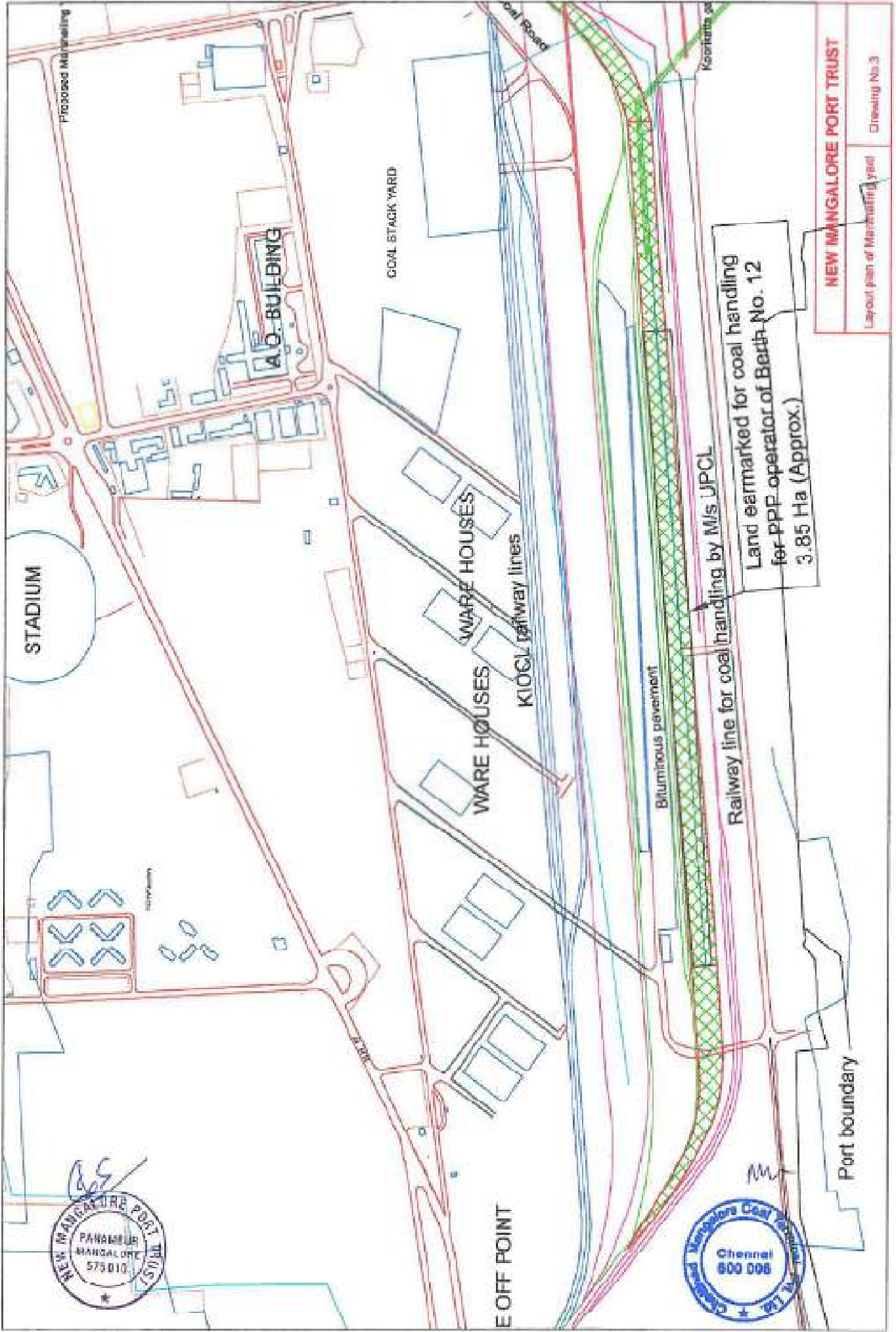


NEW MANGALORE PORT TRUST

Berth No. 12 Backup area

Drawing No.2

Manambur Beach



NEW MANGALORE PORT TRUST
 Layout plan of Mearthing yard
 Drawing No. 3

APPENDIX 2

PORT'S ASSETS

PREMISES (on as is where is basis)

A) Deep Draft Berth. (Only Operational area to be Used)

The Port is constructing the Berth No. 12, which is under progress. The salient features of the Berth are as follows:

- Length of the Berth: 325 Metres.
- Designed Dredged depth: 15.1 Metres
- Design Ship size: 80,000-100,000DWT
- Width of R.C.C Deck- 25 Metres.
- The Berth have provision for rails at 20 M c/c, for ship loaders/ unloaders or crane.

B) Areas Proposed to be made available for setting up the Facilities

The following port assets will be handed over to the Concessionaire for the Concession Period of (30) Thirty Years.

Location	Area (in Sqm)	Description
Panambur Marshalling Yard	40,000	Total area of 4.00 Ha (approximate) <i>as shown in Drawing No 3</i>
Backup area of Berth No. 12 for Coal cargo	1,96,000	An area of 19.60 Ha (approximate) <i>as shown in Drawing No 2</i>
Backup area of Berth No. 12 for Other Cargo	18,000	An area of 1.80 Ha (approximate) <i>as shown in Drawing No 2</i>
Right of way for conveying system (500m x 10m)	5,000	Right of Way (RoW) from Marshalling Yard to Berth <i>as shown in Drawing No 2.</i> Generally 10 M width & wherever junction tower exists, extra width will be allotted
Total Area	2,59,000	

- The project storage area is located behind the Berth No. 12 Parallel to the berth face towards west. The total area available is to the extent of 25.90 Hectares as marked in Drawing No. 2 attached to Appendix 1. Out of which, 19.60 and 1.80 hectare has been earmarked for Coal and Other Cargo respectively; 0.50 Hectare is made available for providing the conveyor system and the remaining 4.00 Hectares is provided for mechanized railway loading including railway track.



2. The Berth is provided with provisions for rails, 20 M c/c, for Coal mobile ship loaders/ unloaders or cranes. The Project Requirements includes installing crane rails to the required span of the project requirements. The drawing indicating the area availability behind Berth No. 12 is enclosed as Drawing No. 2 to Appendix 1.
3. The Loading facilities at railway yard are in the existing Panambur Marshalling Yard located at northern side of berth No.12 at a distance of 2 kms approximately. The area available for loading facility at marshalling yard is 40,000 sqm. The Port has a railway network in the Marshalling Yard. The project requirement envisages yard planning of the subject Project within the area available. The inward and outward entry of train can be connected to existing Port railway tracks at specified locations on southern or northern end of the marshalling yard. The drawing showing the availability of area in the Marshalling Yard and the existing rail tracks is shown in Drawing No. 3 attached to Appendix 1.

C) Other Port Assets

The various structures falling in the back-up area for the Project are listed below which concessionaire may use for their operation or dismantle/alter as per their operational requirements.

1. Signal station (Vessel Traffic Management Solution (VTMS))*
2. STP**
3. Work Shop Godown
4. Railway line No. 5
5. Railway line No. 6
6. Railway Platform No. 6
7. Railway Platform No. 5

*The equipment's are the assets of the Port, only Civil structures will be handed over to the concessionaire in accordance with Clause 6.5 (g).



APPENDIX 3

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of -----
(Month) --- (Year) at -----,
AMONGST,

BOARD OF TRUSTEES for **NEW MANGALORE PORT**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at PANAMBUR, MANGALORE - 575 010 (hereinafter referred to as "**the Concessioneing Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.
AND

M/s. Chettinad Mangalore Coal Terminal Private Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its Registered Office at Rani Seethal Hall Building, 603, Anna Salai, Chennai - 600 006 hereinafter referred to as "**the Concessionaire**" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----
----- hereinafter referred to as "**the Lender**".

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at -----
----- acting for and on behalf of the Lenders listed in Schedule A hereto
(hereinafter referred as "**the Lender's Representative**").

WHEREAS,

- a) The Concessioneing Authority for implementing a Project envisaging Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargoes at NMP on DBFOT basis (hereinafter referred to as "**the Project**"), has by the Concession Agreement dated ----- entered into between the Concessioneing Authority and the Concessionaire (hereinafter referred to as "**the Concession Agreement**") granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;
- b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioneing Authority and the Concessionaire have agreed to enter into Substitution



Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

"Financial Assistance" means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

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

"Lender(s)" means the financial institutions/banks whose name(s) and addresses are set out in **Schedule A** hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders' Representative to the Concessionaire, from time to time.

"Residual Concession Period" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

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

"Suspension Period" means the Termination Period as defined in Article 16 of the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Agreement are completed and the substitution has become effective.



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

ARTICLE 2

2 ASSIGNMENT

2.1 Assignment of rights and title

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

ARTICLE 3

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

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

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



3.2.3 At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioneing Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessioneing Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of Concessionaire Default

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

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

3.4 Procedure for substitution

3.4.1 The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement.



- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessions Authority for shortlisting the bidders for award of the Concession; provided that the Lenders/Lenders' Representative may represent to the Concessions Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessions Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Selectee, the Lenders/Lenders' Representative shall request the Concessions Authority to:
- a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and
 - b) novate the Concession Agreement to the Selectee such that the Selectee replaces the Concessionaire and becomes entitled/obligated to all the rights and obligations of the Concessionaire, for the residual Concession Period.
- 3.4.4 If the Concessions Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders' Representative. If no such objection is raised by the Concessions Authority, the Selectee shall be deemed to have been accepted. The Concessions Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessions Authority, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

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



prevent, obstruct or restrain the Concessing Authority or the Lenders/Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders/Lenders' Representative.

ARTICLE 4

4 TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 5

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

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

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessing Authority is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

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



ARTICLE 6

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

ARTICLE 7

7 INDEMNITY

7.1 General indemnity

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

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

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

7.2 Notice and contest of claims



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

The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

ARTICLE 8

8 GENERAL

8.1 General

- i. The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- ii. Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- iii. The expressions "Concessions Authority", the "Concessionaire", the "Lender" and the "Lenders' Representative", "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- iv. This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessions Authority, "Selectee" and the successor in interest of the Lender or Concessions Authority shall have the benefit of this Agreement.
- v. Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessions Authority and the Lenders/Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to



appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

- vi. This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- vii. The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- viii. This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- ix. The Concessionaire agrees and acknowledges that it shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- x. No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- xi. All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.
- xii. The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.



SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE

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

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

SIGNED AND DELIVERED ON BEHALF OF
NEW MANGALORE PORT TRUST,
THE CONCESSIONING AUTHORITY, BY ITS AUTHORISED SIGNATORY-----

Name :
Title:

SIGNED AND DELIVERED ON BEHALF OF M/S CHETTINAD MANGALORE COAL
TERMINAL PRIVATE LIMITED
THE CONCESSIONAIRE, BY ITS AUTHORISED SIGNATORY-
BY: _____

Name:
Title:

SIGNED AND DELIVERED ON BEHALF OF ----- THE LENDER/
LENDERS' REPRESENTATIVE REPRESENTING THE LENDERS, BY ITS
AUTHORISED SIGNATORY

Name
Title



APPENDIX 4

PROJECT REQUIREMENTS

Project Facilities and Services to be undertaken by Concessionaire are as follows:

- (1) The Project facility will broadly include "Provide Handling Equipment at Berth No. 12 for Handling Bulk Cargo at NMP" on Design, Build, Finance, Operate and Transfer basis for a project capacity of 6.73 Million Metric Tonnes Per Annum from the project, out of which the capacity for Coal is 6.24 MMTPA and that for Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite) is 0.49 MMTPA.
- (2) Designing and installing suitable size cranes on the existing berth No. 12. The design parameters of existing berth No. 12 is given in Appendix 1.
- (3) Developing a suitable stackyard behind Berth No. 12 is shown in Drawing No. 2 attached to Appendix-1.
- (4) Designing and Provide Handling Equipment at Berth No. 12 for Handling Bulk Cargo of required capacity.
- (5) Laying of necessary railway tracks and installation of suitable facilities of required capacity for loading of coal by rail.
- (6) The area is subjected to four months of heavy monsoon and all the equipment and design should specifically take this aspect into consideration.
- (7) The drainage in the storage yard shall be designed to receive the rainwater and the sprinkled water from the storage yard shall be connected to existing drain through settling tanks. The road connectivity in the marshalling yard and storage yard will be through Port internal roads.
- (8) The plant will be designed to the highest environmental standards, using latest dust suppression technologies.
- (9) The facility should provide Electronic Data transfer facility and should have interface with port ERP system wherever required.
- (10) The scope of work will broadly include planning, engineering, designing, installation, operation and maintenance of the mechanical facilities for handling of coal and other bulk cargoes based on the traffic demand. The major components of works are indicated below:



i. Civil & Structural Works

- Railway track
- Storage Yard
- Conveyor Galleries & Transfer Towers
- Building, Roads, Drainage, etc.
- Works Related to the Pollution Control & Environmental Aspects
- Other Miscellaneous Works.

ii. Mechanical Works

- Belt Conveyors
- Stackers/ Reclaimers
- Grab Unloaders
- Dust Suppression System & Ventilation
- Miscellaneous Items
 - Sampling Plant (Optional)
 - Belt Weighers
 - Magnets
 - Fire Fighting System
- Payloader and workshop equipments

iii. Electrical Works

- HT & LT Switchgears
- Transformers
- Cables
- Lighting
- Control System
- Miscellaneous works

iv. Development of back up area, water supply, illumination, fire fighting, railway and road facilities required including development of the land.

v. Development of utilities and services such as communication, office accommodation, etc. required for operation of the berth.

vi. Compliance with environmental laws during implementation i.e. construction, operation and maintenance.



vii. Other provisions:

Planning, design, engineering, installation, operation and maintenance of all developmental works shall comply to the relevant Indian Standards and in the absence of Indian standards, relevant International Standards shall be complied with. The required construction, operation, maintenance and safety standards are annexed to this Appendix. In the absence of both, the Bidder should follow good industry practice. Safety precautions, as per statutory requirements, shall also be complied with. The Concessionaire shall ensure compliance to Quality, Environmental, Occupational Health and Safety and ISPS Codes. The performance standards shall generally comply as set out in Appendix 14.

viii. Others

The personnel and other related facilities should be capable of handling coal in accordance with the Performance Standards set out in Appendix 14.



**CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE
STANDARDS AND SAFETY STANDARDS**

A. General

The Concessionaire shall execute the project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

The Concessionaire shall carry out Construction Works, etc. duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc. shall be complied.

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during cargo operations these facilities meet the required provisions of the Dock Workers Safety Health & Welfare Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO-9001:2008) and environment management system (ISO 14001:2004) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

B. Civil Construction Work

B.1 Dry Bulk

The civil construction work may comprise variety of works such as development of back-up area for storage of cargo approach roads, railways sidings, operational buildings/offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by him meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following



paragraphs.

Indian Standards for Construction of Ports and Harbours

IS 4651 – Part – 1 – 1974	Code of practice for planning and design of ports and harbours: Part 1 Site investigation
IS 4651–Part 2–1989	Code of practice for planning and design of ports and harbours Part 2 Earth pressure
IS 4651-Part III-1974	Code of practice for planning and design of ports and harbours: Part III: Loading
IS 4651- Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part 5-1980:	Code of practice for planning and design of ports and harbours Part:5 Layout and functional requirements
IS 7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and harbour structures: Part 1 Concrete monoliths
IS 9527: Part 3:: 1983	Code of practice for design and construction of port and harbour structure: Part 3 Sheet pile walls
IS 9527: Part 4: 1980	Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures
IS 9527: Part 6: 1989	Code of practice for design and construction of port and harbour structures: Part 6 Block work
IS 10020: Part 4: 1981	Recommendations for design and construction of port and harbour components Part 4 Slipways.
IS 9556: 1980	Code of Practice for design and construction of diaphragm walls

Indian Standards for Foundation Work

IS 2911: Part 1:Sec 1:1979	Code of practice for design and construction of pile foundations Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles
IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 1:Sec 3:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles
IS 2911: Part 1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile



	foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations – Part 1: Design
IS 2974: Part 1: 1982	Code of practice for design and construction of Machine Foundations- Part 1: Foundation for Reciprocating Type Machines.
IS 2974: Part 2: 1980	Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)
IS 2974: Para 3: 1992	Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)
IS 2974:: 1979:	Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary type machines of low frequency.
IS 2974: Part 5: 1987	Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drop crusher and jolter)
IS 1080: 1985	Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).
IS 13094: 1992	Guidelines for Selection of ground improvement techniques for foundation in weak soils.

Indian Standards for Structural Design

IS 875(Part I to V): 1987	Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.
IS 456: 2000	Code of Practice for plain and reinforced concrete.
IS: 800: 1984	Code of practice for general construction in steel
IS: 801: 1975	Code of practice for use of cold formed light gauge steel structural members in general building construction.
IS: 803: 1976	Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.
IS 1893: Part 1: 2002	Criteria for Earthquake Resistant Design of Structures Part I – General Provision and Buildings
IS 1893: Part 4: 2005	Criteria for earth quake resistant design of structures Part 4 - Industrial Structures including Stack-like Structures.
IS 4326: 1993	Code of Practice for Earth Quake Resistant design and



construction of buildings.

C. Cargo Handling Equipment

C-1 General

The concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo/containers. The equipment shall generally conform to the following standards and code of practices.

C-2 Electric Cranes, Wharf and Gantry Cranes

The crane and its mechanisms shall be designed and constructed in compliance with the latest editions and amendments of the following standards and codes of practice. Standards equivalent or higher in BS, JIS, FEM, DIN, ISO, IEC are also acceptable.

Structures and Mechanism

IS 807: 2006	Design, erection and testing (Structural Portion) of Cranes and Hoists – Code of Practice. BS 5400 – Part 10 Steel concrete and composite bridges - Code of practice for fatigue
IS 4137 - 1985	Specification for heavy duty electric overhead travelling and special cranes for use in steel works

Material

IS 800: 1984	Code of Practice for general construction in steel
IS 2062: 2006	Hot rolled low medium and high tensile Structural Steel
IS 2644: 1994	High tensile steel castings
IS 2266: 2002	Steel Wire Ropes for General Engineering Purposes- specification
IS 3177: 1999	Code of Practice for Electric Overhead Traveling Cranes and Gantry Cranes other than Steel Work Cranes

Electricals

IEC standards
IEE – regulations for the electrical equipment of buildings
BS 4999 / FEM 3rd edition Booklet 4 - Motors
BS 171, BS 3941, BS 3938 - Transformers
BS 99 - Fuses

Welding



123
Mr

- IS 7307: Part 1: 1974 Approval test for welding procedures Part 1 Fusion welding of steel.
- IS 7310: Part 1: 1974 Approval test for Welders working to approved welding procedures – Part 1: Fusion welding of Steel.

Painting

- BS 5493 Code of practice for protective coating of iron and steel structures against corrosion

Swedish Standard Sa 2,5 or SIS ST3, SIS 055900 surface preparation

General

- IS 13367:Part 1: 1992 Safe use of Cranes - Code of Practice Part 1 General

Classification of Crane Structures

- Class of utilization: UB (4 Million loading cycles)
- State of loading: Q3
- Group classification: A8
- Impact factor: 1.4
- Duty factor: 0.9
- Nominal load spectrum: 0.8 of rated capacity factor

Mechanism

Class of Utilization State of Loading Group Classification

Hoist	T8	L3	M8
Traverse	T8	L3	M8
Travel	T5	L2	M5
Boom hoist	T3	L3	M4

The wharf cranes shall be designed for Stability as per BS 2573 Part I & II.

C-3 Mobile Equipment

- IS 4357: 2004 Methods for Stability Testing of Fork Lift Trucks.
- IS 4573: 1982 Specification for Power Driven Mobile Cranes
- IS 13473: Part 2:1992/ Cranes - Vocabulary Part 2 Mobile cranes ISO 4306-1985
- IS 13558: Part 2:1995/ Cranes - Controls - Layout and Characteristics – Part



	ISO 7752 -2- 1986 Mobile Cranes
IS 13834 : Part 2: 1993/	Cranes - Classification: Part 2 Mobile cranes ISO 4301 – 2 :1985
IS 13870: Part 2: 1993/	Cranes and Lifting Appliances - Selection of Wire ISO 4308 : 1988 Ropes - Part 2: Mobile Cranes - Coefficient of utilization
IS 14469: 1997/	Mobile Cranes - Determination of Stability ISO 4305 - 1991
IS 14474: Part 1: 1997/	Mobile Cranes - Experimental Determination of Crane ISO 11662-1 ; 1995 Performance – Part 1 : Tipping Loads and Radii
IS 3173: 1965	Specification for High pressure connections for fuel injection equipment for diesel engines

C-4 Conveyors for Bulk Handling

Conveyors

IS 4776:Part 1: 1977	Specification for Troughed Belt Conveyors- Part 1 Troughed Belt Conveyors for Surface Installation
IS 8597 – 1977	Flat Belt Conveyors
IS 11592 – 2000	Code of practice for selection and design of Belt Conveyors
IS 7465 – 1974	Portable and Mobile troughed Belt Conveyor
IS 7155:Part 1: 1986	Code of recommended practice for conveyor safety : Part 1 General Information
IS 7155:Part 2: 1986	Code of recommended practice for conveyor safety : Part 2 General Safety requirement
IS 7155:Part 3: 1986	Code of recommended practice for conveyor safety : Part 3 Belt Conveyors and feeders
IS 7155:Part 4: 1990	Code of recommended practice for conveyor safety : Part 4 Vibrating Conveyor/feeder
IS 7155:Part 5: 1990	Code of recommended practice for conveyor safety : Part 5 Apron Conveyor/Apron Feeder
IS 7155:Part 6: 1990	Code of recommended practice for conveyor safety : Part 6 Selection, Training and Supervision of Operators
IS 7155:Part 7: 1990	Code of recommended practice for conveyor safety : Part 7 Inspection and Maintenance
IS 7155:Part 8: 1994	Code of recommended practice for conveyor safety : Part 8 Flight Conveyors (scraper conveyors)

Idlers and Pulleys

IS 8598 – 1987 Idlers and Idlers Sets



IS 8531 – 1986 Pulleys for Conveyors
IS 11507 – 1985 Synchronous Drive Pulleys

Conveyor Belts

IS 1891(Part I & II)-1978 Rubber Conveyor Belting
IS 1891 – 1988 Amendment to above conveyor
IS 22131 Part I 1980 Steel Cord Conveyor Belting

D. Electrical

IS 325: 1996 Three-phase induction motors
IS 900: 1992 Code of practice for installation and maintenance of induction motors
IS 1231: 1974 Dimensions of Three-phase Foot-mounted Induction Motors
IS 2223: 1983 Dimensions of flange mounted ac induction motors
IS 3682: 1966 Flame-proof ac motors for use in mines
IS 3842: Part 2 : 1966 Application guide for electrical relays for ac systems: - Part 2 Over current relays for generators and motors
IS 4029: 1967 Guide for testing three-phase induction motors
IS 8151: 1976 Single-speed three-phase induction motors for driving lifts
IS 8789: 1996 Values of performance characteristics for three- phase induction motors
IS 9628: 1980 Three-phase induction motors with type of protection 'n'
IS 10242: Part 3 : Sec 1:1983 Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors
IS 12615: 2004 Energy Efficient Induction Motors - Three Phase Squirrel Cage
IS 13529: 1992 Guide on Effects of Unbalanced Voltages on the Performance of Three-Phase Cage Induction Motors
IS 13555: 1993 Guide for Selection and Application of 3-Phase A. C. Induction Motors for Different Types of Driven Equipment
IS 14122: 1994 Built in thermal protection for electric motors rated up to 660 V ac
IS 14377: 1996 Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation
IS 15429: 2004 Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987 Code of practice for earthing
IS 3151: 1982 Earthing transformers
IS 5553(Part 6) 1991 Reactor Parts – Earthing of Transformers



IS 9921: Part I: 1981	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1 000 V - Part I: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 1982	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction
IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing - Specification
IS 14981: 2001	Live Working - Earthing or Earthing and Short-Circuiting Equipment Using Lances as a Short-Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 : Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732	IS 732: 1989 Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1 for working voltages upto and including 1100 V
IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working voltages from 3.3 kV upto and including 11 kV
IS 7098 (Part 1) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages upto and including 1100 V



IS 7098 (Part 2) : 1985	Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV upto and including 33 kV
IS 7098 (Part 3) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV upto and including 220 kV
IS 10118 (Part 1) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears : Part 1 General
IS 10118 (Part 2) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 2 Selection
IS 10118 (Part 3) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 Installation
IS 10118 (Part 4) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

E. Operations & Maintenance Standards:

Repairs, Maintenance and Replacement

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

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

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



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

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

E.1 Maintenance Standards

ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1: 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

E.2 Painting

IS 144: 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
IS 145: 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146: 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147: 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164: 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419: 1989	Antifouling paint, brushing for ship's bottom and hulls-Specification (second revision)
IS 6714: 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
IS 6948: 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951: 1973	Specification for Ready mixed paint, finishing, exterior for ships



IS 1477: Part 1 : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
IS 1477: Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954: 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

F. Safety Standards

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

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD - Guidelines - 156 (Oil Industry Safety Directorate): Fire Protection, Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 alongwith The Explosive Substance Act, 1983 & The Explosive Rules, 1983
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association - USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
11. MARPOL CONVENTION
12. International Maritime Dangerous Goods Code



APPENDIX 5

PROJECT SCHEDULE

Milestone Date	Activities/level of completion of Project
Civil Works	
Fifteen (15) Months from Date of Award of Concession	Railway track
	Silo
	Storage Yard
	Foundation for stackers and reclaimers
	Crane tracks in storage yard
	Conveyor Galleries
	Transfer Tower
	Building and approach roads
	Boundary wall
	Drainage
Mechanical Equipment	
Within Eighteen (18) Months from Date of Award of Concession	Grab unloader
	Procurement of Stacker & reclaimer
	Jetty, yard Conveyor and belt conveyor
	Rapid rail loading system
	Pay loaders etc.
Electrical Works	
Within Twenty (20) Months from Date of Award of Concession	Laying of cables
Completion of work and commencement of commercial operation	
Within Twenty Four (24) Months from Date of Award of Concession	Testing and Trial runs
	Commercial operations



APPENDIX 6

DESIGNS AND DRAWINGS

The Concessionaire shall conduct geo-technical investigations, hydraulic and vessel manoeuvring studies, and prepare and submit a report before the detailed layout and designs are prepared/ carried out.

The design and construction of the various components in the proposed Project shall be in accordance with the recognised engineering practice and shall conform to the relevant Indian Standards. In the absence of Indian Standards, relevant International Standards shall be followed. In the absence of both, Good Industry Practice shall be followed.

The Concessionaire shall supply the Designs and Drawings including calculations, in 2 (two) sets to the Independent Engineer for approval and 2 (two) sets to the Concessions Authority for review. The Designs and Drawings shall be sent in batches in chronological order of execution of work to facilitate scrutiny. The Designs and drawings, which shall be in metric/ SI unit, shall be bold and clear. References shall be given in general wherever required, for all Designs and Drawings.

The Concessionaire shall supply to the Concessions Authority 2 (two) sets of the finalised Designs and Drawings within 15 (fifteen) Days of the approval by the Independent Engineer thereof. The Concessionaire shall also supply to the Concessions Authority 1 (one) set of the 'As Built' Drawings within 30 (thirty) Days from the date of completion of the Date of Commercial Operation of the Project Facilities along with a soft copy.

On the Date of Commercial Operation, the berth and stack yards shall be equipped with fully mechanised state of art handling equipments having handling rates to commensurate to achieve the capacity of 6.73 MMTPA of coal & other cargo.

The area available for stackyard behind the berth is 21.40 Ha. This area will include area for stacker reclaimer rail, utility lines, conveyor galleries, Workshops, Administration buildings, etc.

Scope includes Design, Engineering, Manufacture, Supply, Erection and Commissioning/ Test Run of the following Systems, which will be complete in terms of the required electrical and control systems together with interlock provisions to ensure safe operation.

Power supply shall be designed to receive the power at number of points as required near the systems at 6.6 KV & 415V from the nearest Switchgear Room.

Scope of the system shall generally as follows:



Grab Unloader System:

1. General Arrangement Drawing (including lighting arrangement)
2. Supervision as required during Construction of Grab Unloader System
3. Foundation drawings for SAC Rail Track and rack (General Arrangement) with Load Data
4. Supervision as required during foundation work for SAC Rail Track
5. Design / drawing for Counterweight
6. General Arrangement Drawing of Grab Unloader Control Room
7. Grab Unloader Speed Retarders or suitable arrangement
8. First fill lubricants up to commissioning & test runs
9. Supervision as required during the Rail Track fixing work
10. Special Tools for maintenance if any

Stacker Systems:

1. Load data /drawings for civil design of the Rail foundation.
2. Design / Drawing for counterweights
3. Supervision as required during foundation work of the Rail Track
4. First fill lubricants up to commissioning & test runs
5. Special Tools for maintenance if any

Reclaimer Systems:

1. Load data/ drawings for civil design of the Rail foundation
2. Design/ Drawing for counterweights
3. First fill lubricants up to commissioning & test runs
4. Special Tools for maintenance if any

Stacking System

Stacker

The system shall be complete with the equipment mounted on bogie assembly which in turn is mounted on rails and shall include the following:

- i. Transfer chutes liners, idlers, safety accessories, belt cleaners, pulleys etc.
- ii. Tripper car for Stacker mounted on the trolley.
- iii. Trolley drives, gears, wheels guide rolls.
- iv. Travel drives electrical controls.
- v. Slewing gears, drives and safety and controls.
- vi. Luffing mechanism complete with drives and accessories
- vii. Dust Suppression Unit.
- viii. Complete on board Illumination, Fire Extinguishing, Air-conditioning of working



enclosures and Instrument Rooms

- ix. Operator's Cabin
- x. Complete electrical, trailing cables with all-weather enclosures and cable reel drives and controls and drives for motors power supply and conditioning, MCC Mimic Panel, communication to Control Room and UPS power for critical function alarms, annunciation fault indicators, PLCs, wind wane Anemometer etc.
- xi. Lubrication system grouped for the applications
- xii. Structural items / Fabricated trolley counter arm with ballast boom, walkways, platforms, tripper bogie, main platform portal bogie, end stops, carriage and supporting structures, compensating arrangement.
- xiii. Rails and rail fixtures for the required track length
- xiv. Special tools and tackles, instruments, jigs, torque wrenches etc.
- xv. First fill of lubricants, cleaning/flushing oils and solutions.
- xvi. Commissioning Spares.

Reclaimers

The system shall be complete with the equipment mounted on bogie assembly which in turn is mounted on rails and shall include the following:

- i. Transfer chutes liners, idlers, safety accessories, belt cleaners, pulleys etc.
- ii. Hopper for the Reclaimer
- iii. Trolley drives, gears, wheels guide rolls,
- iv. Travel drives electrical controls.
- v. Slewing gears, drives and safety and controls.
- vi. Luffing mechanism complete with drives and accessories
- vii. Bucket Wheel with drives and electrical
- viii. Suitable Dust Suppression Unit for all transfer points.
- ix. Complete on board Illumination, Fire Extinguishing, Air-conditioning of working enclosures and Instrument Rooms.
- x. Operator's Cabin
- xi. Complete electrical, trailing cables with all-weather enclosures and cable reel drives and controls and drives for motors power supply and conditioning, MCC Mimic Panel, communication to Control Room and UPS power for critical function alarms, annunciation fault indicators, PLCs, wind wane Anemometer etc.
- xii. Lubrication system grouped for the applications
- xiii. Structural items / Fabricated trolley counter arm with ballast boom, walkways, platforms, main platform portal bogie, end stops, carriage and supporting structures, compensating arrangement.
- xiv. Special tools and tackles, special instruments, jigs, torque wrenches etc.
- xv. First fill of lubricants, cleaning/flushing oils and solutions.
- xvi. Commissioning Spares.

Conveyors



The system comprises the following components for each of the above conveyors as applicable.

- Motors
- Conveyor Frames
- Stools for Supporting Conveyor Frames
- Idlers – Carrying, Return, Impact, Self-aligning and Transition
- Idler Frames
- Gear Boxes
- Couplings
- Drums / Pulleys
- Bearings & Plummer Blocks
- Bed Frames
- Skirt Plates
- Decking Plates

Belt Cleaning Devices

- Hold Back Devices
- Electro-magnetic Brakes
- Pull Cord Switches
- Belt Sway Switches
- Zero Speed Switch
- Guards
- Belting
- Take up Devices
- Chutes & Liners

Design Considerations for conveyors

Each of the Conveyors has to work in most adverse working conditions like heavy dust, open to sun-light, high surface temperatures up to 50°C, heavy rains, relative humidity up to 100% etc. The Conveyor shall be able to start in full load conditions. The minimum tail end height shall be 1200 mm and head end height shall be as per system requirement. In case of dual drive system for the conveyors, if one drive fails then the other drive shall be able to take minimum 50% load. There shall be a minimum clearance of 0.5M between ground and the return belt throughout the length of the conveyor.

Belt Conveyor components and accessories are selected based on relevant Indian Standards IS8730 for Idler, IS11592 for Conveyor Belt Power, IS 4776 (Part 1), IS1891 & IS8531 for Pulley Selection, and IS 8598 for Pulley. Proper care is taken in the selection of individual components considering the environmental conditions on site and the expected life of all components and their respective duties.



There shall be two streams of conveyors transporting reclaimed ore from the reclaimers to the shiploaders; one stream for each reclaimer and shiploader. The capacity of the conveyor shall be designed for achieving a throughput of not less than 75,000 tonnes/ day. The Concessionaire shall give the detailed design indicating belt width, belt speed and belt tension. The drives shall be through fluid couplings and gear boxes. Belt Conveyors, their components shall be designed as per relevant IS codes given in Annexure to Appendix-4 (C-4). The conveyor belt should conform to relevant IS given in Annexure to Appendix-4.

All the electrical equipment shall be designed as per the relevant IS/BS codes given in Annexure (d) to Appendix-4.

Scope for the conveyor system shall include the following;

1. All drive motors as necessary and cabling up to the respective LCSS
2. Field devices installation includes wiring up to the respective drive houses.
3. Illumination along the Conveying Gallery, all Transfer Houses and the Underground Tunnel.
4. Pressurized mechanical ventilation for tunnels.
5. Mimic Diagram Panel

Civil / Structural System

1. Dispersion of loads arising from Railway, dozer surcharge or any other load through soil and coal shall be considered dispersed 1 vertical to 1 horizontal. For design of R.C.C structures, bulk density and angle of repose for coal shall be considered, wherever applicable.
2. Steel structure shall be designed as per IS-800. Deflection limits of the structure shall be as per -IS11592 (code of practice for selection and design of belt conveyor). All transfer houses shall be of structural steel framed building consisting of steel columns and beams with GI sheet cladding. Thereof shall be Galvalume sheeting and floors shall be of chequered plate / gratings supported on steel beams and R.C.C. slab underneath the conveyor drive.
3. Coal yard shall have a peripheral drainage channel to conduct surface water run-off to the coal pile run-off pond. The coal run-off pond shall be a R.C.C. multi-cell concrete settlement tank below ground level. The tank shall collect drainage run-off water from the coal yard.

Railway system

The Project site earmarked for railway loading facility have existing two railway lines call as railway track no. 5 & 6 approximate length of 2.0 KM. the concessionaire may plan the



railway facility accordingly.

Railway line from unloading area at the Panambur Marshalling Yard shall be provided along with all signalling / telecommunication equipments to ensure safe and reliable operation of the entire system Control and Instrumentation.

The control system shall be implemented in a microprocessor based PLC system having 100% hot redundant hardware, which provides fail safe and reliable automatic control and continuous monitoring of various equipment. CRT based operator station and Control desk complete with video display unit (VDU) shall be provided in the Control Room or alternatively the state of art facility shall also be provided.

Fire protection system

Hydrant system as per TAC guidelines shall be provided in the stockyard area. Necessary detection and protection for the ship unloaders, conveyors, stacker cum reclaimers, stacker and in the building shall be provided, which shall mainly include:

- i. Hydrant system for all the conveyor galleries. Spacing of the hydrant in the stockpile location shall be about 40 m in general. Pressure at each hydrant point shall be 3.5 kg/sq.cm (g) pressure break-down orifice, as necessary to restrict pressure of all hydrant point at said value.
- ii. All transfer towers and wagon unloading area shall be provided with hydrant system and portable dry type fire extinguisher.
- iii. Control room and electric substation shall be provided with alarm and dry type fire extinguishers.
- iv. Coal stockyard shall be provided with hydrant system.
- v. Or alternatively the state of art fire fighting facility shall also be provided.

All electrical components shall meet the requirements as per Indian Standards, Indian Electricity Rules/ Acts and other statutory agencies/ bodies/ departments including CEEIG. Where no Indian Standard is available, relevant IEC Specification / British Standard shall be adopted. Approval, as necessary, shall be obtained for the installations by the statutory electrical inspection authority.

1. Pull cord switch cable for each conveyor
2. Belt sway switch cable for each conveyor
3. Zero speed switch cable for each conveyor
4. GI Cable tray for pull cord, Belt Sway, Zero Speed switch in each conveyor
5. Power Cable for HT/LT motors for each conveyor up to LCS
6. Control/ Auxiliary power cable from LCS Room to motor / conveyor.
7. Hooter for each conveyor
8. Local push button station for motors
9. Main Junction Box & Sub JB for pull cord, Belt Sway for each Conveyor.



10. Earthing System for each Conveyor, Motors & Earth Pits
11. Lighting System for Conveyor & Junction Towers
12. Light fittings / accessories
13. MLDB/ SLDB for each conveyor normal/ emergency
14. All Motors
15. Maintenance facility (welding socket) for each conveyor
16. Junction Boxes for conveyor to link with DCS/ PLC System



APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

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

- i. review and approval of the DPR
- ii. review of the Designs and Drawings;
- iii. review, inspection and monitoring of Construction Works;
- iv. conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- v. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- vi. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- vii. assisting the Parties in resolution of disputes as regards the Designs & Drawings and all technical matters related to the Concession Agreement; and
- viii. undertaking all other duties and functions as envisaged under the Agreement.

2. Review Designs and Drawings

- i. The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.
- ii. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.
- iii. The Independent Engineer shall review the monthly progress reports as regards



the Construction Works.

- iv. The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 28th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.
- v. The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- vi. For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- vii. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- viii. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.
- ix. In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.



- x. If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessions Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- xi. Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessions Authority.
- xii. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.
- xiii. The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.



Annexure to Appendix 7

Tests

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the project requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and its contractors will be as per the relevant provisions of this Agreement.
- 2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the best industrial practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
- 5) The Independent Engineer at his discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipments and machinery and any other component to ascertain the soundness of the work.
- 6) Schedule of test.
 - (i) the Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of the Agreement
 - (ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted
- 7) Tests.
 - (i) **Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Port requirements to determine that all works and equipment forming part thereof conform to the provisions of the Agreement.
 - (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of



- the IS codes for manufacture and testing of equipments and machinery
- (iii) **Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
 - (iv) **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the project requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
 - (v) **Safety Review:** Safety Audit of the project requirements shall have to be undertaken with the assistance of the relevant statutory authorities to determine conformity of the project requirements with the provisions of the Agreement.
 - (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged through the Concessionaire.
- 8) The Independent Engineer shall obtain a copy of operational and maintenance manual of the project requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements. The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual will also cover the minimum maintenance requirement to adhere to the performance standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.
- 9) The test procedure shall be followed as per ASTM, BIS, IS
- 10) The tests shall also satisfy the appropriate Authority and Certification, such as :
- (i) Dock safety Directorate
 - (ii) Environmental Authority
 - (iii) Director of Explosives
 - (iv) Fire Authority
 - (v) Ground Water Authority
 - (vi) Customs



APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/CONCESSIONING AUTHORITY

- A. Applicable permits to be obtained by the the concessionaire before commencement of construction work.

Permits /Clearance	GRANTING AUTHORITY
Plot Plan approval	Dock safety Inspector / OISD guidelines
Electrical Installations	Department of Electrical Inspectorate, Government of Kamataka
Fire Fighting Installation	Chief Fire Officer, Bangalore OISD guidelines or Applicable international codes / practices
Railway Infrastructure	Southern Railways
Customs notification	Commissioner of Customs

Apart from the above mentioned clearances and permits, the Concessionaire shall also be responsible to obtain all other necessary permits and clearances required for implementation of the Project and which are not explicitly required to be obtained by the Authority under this Agreement. In this regard, the Concessionaire will have to ascertain independently the applicable permits/ clearances/approvals apart from what is provided above, that are required for implementation of the Project during the Concession Period.

- B. The following list of the permits available with Concessioning Authority.

ACTIVITY	AUTHORITY
Port limit notification	Ministry of Shipping, Government of India
Custom notification for part of the area proposed to be leased	Commissioner of Customs
Fire safety concerns	Port Fire Office for hot work Permits

The Environmental Clearance for the project has been obtained by the Concessioning Authority. However, the Concessioning Authority shall be required to obtain the necessary amendments for handling bulk cargo at Berth no. 12. However, in case the Concessionaire decides to go for additional dredging and strengthening of berths to cater to deeper drafted vessels, the responsibility for obtaining the required approvals and clearances including Environmental Clearance from MoE&F shall be that of the Concessionaire.

The Concessionaire shall ensure that all the conditions subject to which the Applicable Permits including Environmental Clearance are granted are complied with.



APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)²

THIS DEED OF GUARANTEE executed on this the --- day of --- at --- by -----
----- (Name of the Bank) having its Head/Registered office at -----
----- hereinafter referred to as "the Guarantor" which
expression shall unless it be repugnant to the subject or context thereof include its successors
and assigns;

In favour of

THE NEW MANGALORE PORT TRUST, a body corporate constituted under the provisions
of the Major Port Trusts Act, 1963 and having its Administrative Office at (hereinafter
referred to as "the Board" or "the Concessioneing Authority") which expression shall,
unless repugnant to the context or meaning thereof include its administrators, successors or
assigns.

WHEREAS

- a) The Board, vide its Request for Proposal dated [●] ("the RFP") invited duly short listed
bidders to implement a project envisaging "Mechanization of Berth No. 12 for providing
equipments for handling Bulk Cargoes at NMP"(more particularly described in Appendix
1 and hereinafter referred to as "the Project");
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid
of the consortium comprising of Chettinad Builders Private Limited, South India
Corporation Private Limited and Chettinad International Coal Terminal Private Limited
("the Consortium") and issued the Letter of Intent No 29/3/CA/B.12/CE(C)/2015-16/TS
dated 09.03.2016 ("LOI") to the Consortium requiring, inter alia, the execution of the
Concession Agreement, ("the Concession Agreement") the draft whereof was provided
in the RFP;
- c) Pursuant to the LOI the Consortium has promoted and incorporated a special purpose
company Chettinad Mangalore Coal Terminal Pvt. Ltd. ("the Concessionsaire"), to enter
into the Concession Agreement for undertaking, inter alia, the work with respect to the
Project referred to in Recital (a) above and to perform and discharge all its obligations
thereunder.

²To be issued by a Scheduled Bank in India.



- d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. _____ ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessional Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/ non-exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its



obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect for a period of 6 (six) months from the Date of Commercial Operations unless discharged/ released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. 23,47,30,000/- (Rupees Twenty Three Crores, Forty Seven Lakhs and Thirty Thousand Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
 - a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;
 - b. shall not be affected by any failure by the Concessions Authority to perform any of its obligations under the Agreement;
 - c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
 - d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
 - e. shall not be affected by any failure, omission or delay on the Concessions Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessions Authority in this Guarantee;
 - f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under



this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.
10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of Mangalore for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by _____ Bank by the hand of Shri _____ its _____ and authorized official.



APPENDIX 10

CERTIFICATES

COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project for "Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargoes at NMP" on Design, Build, Finance, Operate and Transfer (DBFOT) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the
INDEPENDENT ENGINEER by:
(Signature)
(Name)
(Designation)
(Address)



PROVISIONAL CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on Design, Build, Finance, Operate and Transfer (DBFOT) basis through [●] (Name of Concessionaire), hereby certify that the Tests specified in Article 6.7 and Annexure to Appendix-7 and Schedule-[●] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioneing Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

<p>ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:</p> <p>(Signature)</p> <p>(Name and Designation)</p> <p>(Address)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:</p> <p>(Signature)</p> <p>(Name and Designation)</p> <p>(Address)</p>
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APPENDIX 11

PERSONNEL AND LABOUR REQUIREMENTS

The concessionaire shall comply all the personnel and labour requirements as per the Ministry of Labour circulars and orders.



APPENDIX 12

TARIFFS

The Concessionaire may charge fees for the Project Facilities and Services provided in accordance with the **Tariff Order No. TAMP/60/2015-NMPT** Dated 16th November, 2015 Notified in the Gazette of India Extra Ordinary (Part III Section 4) on 6th January 2016 published by TAMP. As a ready reference, the relevant extract of the Tariff Notification is as under.



(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

G.No.8

New Delhi,

6 January 2016

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from New Mangalore Port Trust (NMPT) for fixation of reference tariff for mechanization of Berth No. 12 at NMPT by providing equipments for handling bulk cargo through Public Private Partnership (PPP) mode under the revised guidelines for Determination of Tariff for Projects at Major Ports, 2013, which were notified vide Notification No.TAMP/18/2013-Misc. dated 30 September 2013 vide Gazette No. 254, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)



NEW MANGLORE PORT TRUST

**REFERENCE TARIFF SCHEDULE FOR HANDLING COAL AND OTHER CARGO AT BERTH
NO.12 AT NEW MANGLORE PORT TRUST**

CHAPTER 1 – DEFINITIONS & GENERAL TERMS & CONDITIONS

1.1. Definitions – General

In this Scale of Rates, unless context otherwise requires, the following definitions shall apply:

- (i). "Coastal Vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the Competent Authority / Director General of Shipping.
- (ii). "Foreign - going vessel" shall mean any vessel other than coastal vessel.
- (iii). "Per Day" shall mean per calendar day unless otherwise stated.

1.2. General Terms and Conditions:

- (i). The status of a vessel as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
 - (a). The cargo related charges for all coastal cargo other than thermal coal, POL including crude, iron ore and iron ore pellets should not exceed 60% of the normal cargo related charges.
 - (b). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from/ to quay to/ from storage yard including wharfrage.
 - (c). Cargo from a foreign port, which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be, levied the concessional charges relevant for its coastal voyage. In other words, cargo from / to Indian ports carried by vessel permitted to undertake coastal voyage will qualify for the concession.
- (ii). Interest on delayed payments/ refunds.
 - (a). The user shall pay interest at the rate of 2% above the Prime Lending Rate of State Bank of India (SBI), on the delayed payments of any charge under the Scale of Rates.
 - (b). Likewise, the Port Trust shall pay penal interest at the rate of 2% above the Prime Lending Rate of State Bank of India (SBI), on delayed refunds.
 - (c). The delay in refunds will be counted beyond twenty days from the date of completion of services or on production of all the documents required from the User whichever is later.
 - (d). Delay in payments by user will be counted only 10 days after the date of raising the bills by Terminal Operator. This provision will, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in the Scale of Rates.



- (iv). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- (v). (a). The rates prescribed in the Scale of Rates are ceiling levels, likewise, rebates and discounts are floor levels. The operator may, if they so desire, charge lower rates and/or allow higher rebates and discounts.
- (b). The operator may also, if he so desire, rationalize the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalization gives relief to the users in the rate per unit and the unit rates prescribed in the Scale of Rates does not exceed the ceiling level.
- (c). The operator should notify the public such lower rates and/ or rationalization of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rate notified by the Authority.
- (vi). Users will not be required to pay charges for delays beyond reasonable level attributable to the operator.
- (vii). No claim for refund shall be entertained unless the amount refundable is ₹100/- or more. Likewise, terminal operator shall not raise any supplementary or under charge bills, if the amount due to the operator is less than ₹100/-.

2. Cargo Handling Charges

Sr. No.	Particulars	Rate in ₹ per metric tonne	
		Foreign	Coastal
(i).	Thermal Coal	284.50	284.50
(ii).	Other Coal	284.50	170.70
(iii).	Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	72.64	43.58

- (i). The handling charges for coal (thermal and other coal) prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of storage, storage at the stackyard upto a free period of 25 days, reclaiming from stackyard and loading onto trucks/ railway wagon, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services not specifically included in SOR.
- (ii). The handling charges for other cargo (Limestone, Gypsum, Dolomite) prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of storage, storage at the stackyard upto a free period of 5 days, reclaiming from stackyard and loading onto trucks, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services not specifically included in SOR.
- (iii). The handling charges for other cargo (Fertilizer) prescribed above is a charge only for unloading of the cargo from the vessel and transfer of the same up to the Port storage sheds. The handling charges also cover other miscellaneous services not specifically included in SOR. Storage of Fertilizer is not envisaged in this project and handling charges shall not include the charges against storage.

3. Storage Charges

The storage charge for the coal and other cargo (Limestone, Gypsum, Dolomite) stored in the yard beyond a free period (25 days for coal and 5 days for other cargo) after complete discharge of vessel's cargo, shall be as below:



Sr. No.	Description	Rate in ₹ per MT per Day or part thereof	
		For Coal Import	For Other Cargo Import (Limestone, Gypsum, Dolomite)
(i).	Free period	25 Days	5 Days
(ii).	First five days after expiry of free period	1.07	0.78
(iii).	6th day to 10th day after expiry of free period	1.81	1.17
(iv).	From 11 th day onwards	2.14	1.56

Notes:

- (i). (a) For the purpose of calculation of free period, Customs notified holidays and Terminal's non-working days shall be excluded.
- (b) Free period shall be calculated from the day following the date of complete discharge of goods from the vessel on to the berth.
- (ii). Storage charges on cargo shall not accrue for the period when the Terminal Operator is not in a position to deliver the cargo when requested by the User due to reasons attributable to the Terminal operator.
- (iii). Storage charges shall be payable for all days including Terminal's non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.

4.

GENERAL NOTES:

- (i). The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2015 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.
- (ii). From the date of Commercial Operation (CoD) till 31st March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the tariff guidelines of 2013 which will be applicable for the entire licence period.

However, the Licensee would be free to propose a tariff along with Performance Standards (the "Performance Linked Tariff") from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

- (iii). The proposal shall be submitted to TAMP along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Licence Agreement or for the actual number of months of operation in the first year of operation as the case may be.



- (iv). On receipt of the proposal, TAMP will seek the views of the Major Port Trust on the achievement of Performance Standards as outlined in para 5 of the tariff guidelines of 2013, within 7 days of receipt.
- (v). In the event of Licensee not achieving the Performance Standards as incorporated in the Licence Agreement in previous 12 months, TAMP will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the Licensee shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.
- (vi). After considering the views of the Major Port Trust, if TAMP is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15th of March to be effective from 1st of April of the ensuing financial year.
- (vii). While considering the proposal for Performance Linked Tariff, TAMP will look into the Performance Standards and its adherence by the Licensee. TAMP will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the Licensee. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the tariff guidelines of 2013
- (viii). From the third year of operation, the Performance Linked Tariff proposal from the Licensee shall be automatically notified by TAMP subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The Licensee, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1st March and TAMP shall notify by 20th March, the Performance Linked Tariff to be effective from the ensuing financial year.



PERFORMANCE STANDARDS

A. Gross Berth Output.

- (i). The parameter deals with the productivity of the terminal (Gross Berth Output) for Coal. In case of dry and break-bulk cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity.
- (ii). The Gross Berth Output shall be calculated as the total cargo handled from the ship during a month divided by the time spent by the ship at the terminal expressed in number of working days of ships in that month at that terminal. **While determining the number of working days from the ship hours, the berth allowance of 5 (five) hours shall be subtracted from the total hours.**
- (iii). The norms for Gross Berth Output for different categories of cargo are as follows:

Cargo Category	Norms
Thermal Coal	35,000 T/day
Other Coal	35,000 T/day
Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	8,000 T/day

B. Transit Storage Dwell Time.

Bulk Cargo:

The Transit Storage Dwell Time for coal shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

Average disposal of Cargo per day (A) = $\frac{OB + Received/ Despatched}{CB \text{ No. of days}}$
 OB = Opening Balance, CB = Closing Balance.
 Average Parcel Sizes (B) = $\frac{P1+P2+ \dots + Pn}{N}$ (no. of parcels)
 P1, P2 ... Pn are parcel size of each vessel in a month.
 Transit Storage Time for Bulk Cargo = $0.5(B/A)$.

C. Transit Storage Dwell Time- Import:

Coal (at stackyard) 15 days on completion of vessel.

D. Turnaround Time for receipt/delivery operation:

The Turnaround Time for receipt/delivery operation shall be the sum of time taken for loading/ unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks/ trailers/ rakes.

- (i). (a). Truck (Single operation) = 10 min
- (b). Truck (Double operation) = 20 min
- (ii). (a). Rake (Single operation) = 4hrs
- (b). Rake (Double operation) = 8 hrs



APPENDIX 13

**RATES APPLICABLE IN RESPECT OF LAND,
UTILITIES AND SERVICES
(Scale of Rates)**

The Current Scale of Rates as published by New Mangalore Port Trust is attached herewith. As and when the Scale of Rates are revised by TAMP or such other competent authority under the Applicable Laws, the same shall be applicable.



(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

G No. 38

New Delhi, 21 February 2012

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the New Mangalore Port Trust for revision of its Scale of Rates as in the Order appended hereto.

(Rani Jadhav)
Chairperson



NEW MANGALORE PORT TRUST**SCALE OF RATES****CHAPTER - I****Definitions and General Terms and Conditions****1.1. Definitions – General**

In this Scale of Rates unless the context otherwise requires, the following definitions shall apply:

- (i). "Coastal Vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority.
- (ii). "Foreign - going vessel" shall mean any vessel other than coastal vessel.

1.2. General Terms & Conditions

- (i). The status of a vessel as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levy of vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii). (a). Vessel related charges shall be levied on ship owners/steamer agents. Wherever rates have been denominated in US dollar terms the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the Market Buying Rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector Banks as may be specified from time to time. The date of entry of the vessel into the Port Limits shall be reckoned with as the day for such conversion.
- (b). Container related charges denominated in US dollar terms shall be collected in equivalent Indian Rupees. For this purpose, the Market Buying Rate prevalent on the date of entry of the vessel in case of import containers and on the date of arrival of containers in the Port premises in the case of export containers shall be reckoned as the day for such conversion of dollar denominated charges.
- (iii). A regular review of exchange rate shall be made once in thirty days from the date of arrival of the vessel in cases of vessels staying in the Port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of the review.
- (iv). (a). A foreign going vessel of India flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order.
- (b). A foreign going vessel of Foreign flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
- (c). In cases of such conversion, coastal rate shall be chargeable by the load port from the time the vessel starts loading coastal goods.
- (d). In cases of such conversion, coastal rate shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign going rates shall be chargeable by the discharge Ports.



- (e). For dedicated Indian Coastal vessels having a Coastal Licence from Director General of Shipping, no other documents will be required to be entitled to coastal rates.
- (v). (a). The vessel related charges for all Coastal vessels should not exceed 60% of the corresponding charges for other vessels.
- (b). The cargo/container related charges for all coastal cargo/containers, other than thermal coal, POL including Crude Oil, iron ore and iron pellets, should not exceed 60% of the normal cargo/container related charges.
- (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from/to quay to/from storage yard including wharfage.
- (d). In case of container related charges, the concession will be applicable on all the relevant charges for ship-shore transfer and transfer from/to quay to/from storage yard as well as wharfage on cargo and containers.
- (e). Cargo/container from a foreign port which reaches an Indian Port "A" for subsequent transshipment to India Port "B" will be levied the concession charges relevant for its coastal voyage. In other words, cargo/containers from/to Indian ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.
- (f). The charges for coastal cargo/containers/vessels shall be denominated and collected in Indian Rupee.
- (vi). Interest on delayed payments/refunds:
- (a). The User shall pay interest at the rate of 16.75% per annum, on the delayed payments of any charge under the Scale of Rates.
- (b). Likewise, the Port Trust shall pay penal interest at the rate of 16.75% per annum on delayed refunds.
- (c). The delay in refunds will be counted beyond twenty days from the date of completion of services or on production of all the documents required from the User whichever is later.
- (d). Delay in payments by user will be counted only 10 days after the date of raising the bills by NMPT. This provision will, however, not apply to the cases where payment is to be made before availing the services/use of port properties as stipulated in the MPT Act, 1963 and/or where payment of charges in advance is prescribed as a condition in the Scale of Rates.
- (vii). No refund shall be made unless the amount refundable is ₹100/- or less. Likewise, NMPT will not raise any supplementary or under charge bills, if the amount due to Port is ₹100/- or less.
- (viii). All charges worked out shall be rounded off to the next higher rupees in each category.
- (ix). (a). The rates prescribed in the Scale of Rates are ceiling levels, likewise, rebates and discounts are floor levels. The NMPT may, if they so desire, change lower rates and/or allow higher rebates and discounts.
- (b). The Port may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the Users in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.



(c). The Ports should notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(x). Users shall not be required to pay charges for delays beyond a reasonable level attributable to the NMPT.

CHAPTER - II

VESSEL RELATED CHARGES

2.1 . PORT DUES

Vessels chargeable (Sea going vessels of 15 tonnes and above)	Rate per GRT		Frequency of payment in respect of the same vessel	
	Foreign-going Vessels (in US\$)	Coastal vessels (in ₹)	Foreign-going vessels (in US \$)	Coastal vessels (in ₹)
Ships/Steamers	0.143	2.32	Each entry	Each entry
Tugs, Launches, Barges, etc. not included above	0.040	1.07	Each entry	Each entry

Notes:

1. 'Ship' means a vessel propelled solely by wind power and 'Steamer' means any vessel other than a ship. In respect of sailing vessels fitted with auxiliary engines charges shall be levied at the rate applicable to ships.
2. A vessel entering the port in ballast and not carrying passengers shall be charged with only 75% of the port dues with which she would otherwise be chargeable.
3. A vessel entering the port but not discharging or taking in any cargo or passenger (with the exception of such un-shipment and re-shipment as may be necessary for the purpose of repairs) shall be charged with only 50% of the port dues with which she would otherwise be chargeable.
4. A LASH vessel making a 'second call' to pick up empty and/or laden floating LASH barges shall be treated as a vessel entering the Port but not discharging or taking any cargo or passengers therein, as described in Section 50B of the Major Port Trusts Act, and shall not be charged any Port Dues.
5. No Port dues shall be levied in respect of:
 - (i). any pleasure yacht, or,
 - (ii). any vessel which having left the port is compelled to re-enter it by stress of weather = or in consequence of having sustained any damage.
6. For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the remarks column of its International Tonnage Certificate will be taken to be its gross tonnage for the purpose of levying port dues.



2.2 . PILOTAGE

Classification of the vessels	Rate per GRT	
	Foreign-going vessels (in US \$)	Coastal vessels (in ₹)
(i). For Pilotage both inward and outward		
(a). Upto 30,000 GRT	0.320 subject to a minimum of US\$ 960	8.55 subject to minimum of ₹25,881.00
(b). 30,001 to 60,000 GRT	US \$ 9600 + US \$ 0.258 per GRT over 30,000 GRT	₹2,56,508 + ₹6.84 per GRT over 30,000 GRT
(c). 60,001 GRT and above	US \$ 17280 + 0.224 per GRT over 60,000 GRT	₹4,81,894 + ₹5.99 per GRT over 60,000 GRT
	Rate per vessel	
(ii). (a). Barges, Tugs, Launches, etc., not specified above and sailing vessels [with/without auxiliary engines] and fishing vessels upto GRT 199	US \$ 71.34 per vessel	₹1907.00 per vessel
(b). 200 GRT and above	US \$ 107.00 per vessel	₹2860.00 per vessel

Notes:

- Pilotage-cum-towage fee will be composite fee and shall include one inward and one outward movement with services of Port's Pilot for to and fro pilotage and towage with required number of tugs/launches of adequate capacity and shifting/s of vessels for 'Port convenience' and supply of mooring boats.
- No charges for shifting shall be levied for shifting of a vessel for Port convenience.
 - "Port convenience" is defined to mean the following:
 - If a working cargo vessel at berth or any vessel at mooring is shifted/unberthed for undertaking dredging work/ hydrographic survey work or for allotting a berth for the dredger or for attending to repairs to berths, maintenance and such other similar works whereby shifting/pilotage is necessitated, such shifting/pilotage shall be considered as "SHIFTING FOR PORT CONVENIENCE". The shifting/ pilotage made to reposition such shifted vessel shall also be considered as "SHIFTING FOR PORT CONVENIENCE"
 - For shifting/pilotage of any vessel for the convenience of/benefit of another vessel, the vessel benefited is liable to pay the shifting/pilotage charges for shifting and re-positioning of the vessel shifted.
- Shifting at the request of the vessels will attract separate shifting charges as prescribed below:

Shifting charges:

Classification of vessels	Rate per GRT	
	Foreign going vessel (in US \$)	Coastal vessel (in ₹)
(i). (a). Upto 30,000 GRT	0.08 subject to a minimum of US \$ 240	2.14 subject to a minimum of ₹6415.20
(b). 30,001 to 60,000 GRT	US \$ 2400 + US \$ 0.064 per GRT over 30,000 GRT	₹64152 + ₹1.71 per GRT over 30,000 GRT
(c). 60,001 GRT and above	US \$ 4320 + 0.068 per GRT over 60,000 GRT	₹116474 + ₹1.50 per GRT over 60,000 GRT



	Rate per vessel	
	(i)(a). Barges, Tugs, Launches, etc., not specified above and sailing vessels [with/without auxiliary engines] and fishing vessels upto GRT 100	US \$ 17.84 per vessel
(b). 200 GRT and above	US \$ 26.75 per vessel	₹715.00 per vessel

(ii). When tugs are not used for shifting, 50% concession shall be given on shifting charges.

4. The shifting charges prescribed above are for the movement of vessels within the dock basin movement from/to anchorage outside the dock basin qualifies for a second set of pilotage fee.
5. If the status of the vessel is changed during its stay in the Port, from foreign run to coastal run or vice versa, then the consolidated pilotage should be divided into two equal halves (i.e. one for inward and other for outward pilotage) which should be charged according to the status of the vessel prevailing at the time of taking place of relevant movement.
6. Where a movement of a vessel is aborted or had to be changed due to reasons like tug failure, insufficiency of length, lack of proper fenders, etc. for which the vessel is not at fault, no charge shall be levied for the unsuccessful operation involved till she occupies allotted berth.
7. For piloting a vessel on COLD MOVE as certified by the Master of the vessel namely without the power of the engine of the vessel partly or fully in any operation, a surcharge of 20% shall be levied over the rates payable as per the Schedule of pilotage charges prescribed above.
8. During the course of hot movements, if a vessel fails to offer its full power for a duration not exceeding five minutes, it shall not be considered as cold move.
9. In the event of the vessel carrying a Pilot outside the Port limits for unavoidable reasons, the Master shall be bound to leave the pilot at the next nearest port and Master, Owner or his representatives shall be responsible for the repatriation and all connected formalities thereof and also be liable to pay all expenses incurred in the matter of boarding, lodging, other reasonable expenses and repatriation of the Pilot thus over carried. In addition, compensation at the rate of ₹76.00 for coastal vessels or US\$ 2.84 for foreign going vessel per hour shall be payable by the Master of the vessel till the Pilot reports back to duty at the Port.

2.3 Detention charges of the vessels:

Sl. No.	Description	Foreign going vessel (in US \$)	Coastal vessel (in ₹)
(i).	For cancellation of a requisition for the services of a Pilot with less than 2 hours notice for pilotage between 0600 hours to 1800 hours or with less than 6 hours notice for pilotage between 1800 hours and 0600 hours	75.00	2005.00
(ii).	For detention of Pilot by a Steamer for more than 30 minutes beyond the time or which the requisition was made		
	(a). For 1st hour or part thereof	37.50	1002.00
	(b). For every subsequent hour or part thereof.	31.25	835.00

Notes:

In case where a Pilot boards a Steamer but has to return on being informed that this services are not required, cancellation charges specified in sub-item (i) above shall be levied. If a Pilot is made to wait for more than 30 minutes after boarding the vessel before being informed that his services are not required, charges specified in sub-item (ii) above shall be levied in addition to cancellation charges.



2.4. Berth Hire charges:

2.4.1. Berth Hire charges for occupation of berths where wharf cranes are not installed

Classification of the Vessel	Rate per hour or part thereof per GRT	
	Foreign going vessel (in US \$/cents)	Coastal Vessel (in ₹)
Vessel other than oil tanker		
All vessels irrespective of GRT	0.17 cents subject to a minimum of US \$ 6	0.045 subject to a minimum of ₹160.40

2.4.2. Oil Tankers and Other vessels

Classification of the Vessel	Rate per hour or part thereof per GRT	
	Foreign going vessel (in US \$/cents)	Coastal Vessel (in ₹)
(i). Tankers / Oil tankers	0.25 cents subject to a minimum of US \$ 4.95	0.067 subject to a minimum of ₹132.30
(ii). Sailing vessels, Barges, Tugs (Vessels other than steamer and Tankers)	US \$ 3.096 Per vessel / hour	82.75 Per vessel/hour
(iii). Fishing vessels/ trawlers	US \$ 0.495 Per vessel / hour	13.25 Per vessel / hour
(iv). Wooden rowing boat with or without auxiliary engines	US \$ 0.24 Per vessel / hour	6.50 Per vessel / hour
(v). Double banking	Whenever a vessel is double banked with other vessel occupying a berth, it will be charged 50% of the berth hire specified above.	

(vi). Mother Ships:

- (a). If the mother ships are berthed alongside a Wharf, all the charges as applicable to other Merchant vessels shall be recoverable.
- (b). If anchored at outer anchorage, there will be no pilotage fees, berth hire, mooring charges and tug hire charges
- (c). If anchored at inner anchorage, all applicable vessel related charges excluding berth hire shall be recovered.

(vii). Lash Barges:

- (a). The berth hire charges shall be levied at the rate of ₹12.05 per barge per hour or part thereof for coastal vessel or US \$ 0.45 per barge per hour or part thereof for foreign going during the process of loading and unloading of cargo.
- (b). When the barges wait at the safe floating area, they shall be charged at ₹4.00 per barge per hour or part thereof for coastal vessel or US \$ 0.15 per barge per hour or part thereof for a foreign going vessel.
- (c). The charges for towing of barge shall be according to the rate prescribed for tugs or launches, as the case may be.

Notes:

1. Berth hire shall be levied per hour from the time of completion of mooring of a vessel in a berth or when its anchoring is completed, whichever ever is later.



2. (i). Berth hire shall stop 4 hours after the time of the vessel signaling its readiness to exit. A penal berth hire equal to berth hire charges for one day's berth hire charge (i.e. 24 hours) shall be levied for a false signal.

"False signal" would be when a ship signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessel. This excludes the signaling readiness when a ship is not able to sail due to unfavourable tide, lack of night navigation or adverse weather conditions."

- (ii). The time limit prescribed for cessation of berth hire shall exclude the ship's waiting time for want of favourable tidal conditions or on account of inclement weather or due to absence of night navigation facilities.

3. A vessel which owing to an impending cyclone, elects to stay in the Port after being duly warned by the Port authorities, shall be charged at the specified rates for the period covered by warning and commencing in the case of a vessel which has not completed its loading or unloading at the time of warning, from the day after the loading or unloading has been completed.

4. The vessel for whose convenience an adjacent berth(s) is (are) kept vacant due to the nature of cargo to be handled at that particular berth shall be charged berth hire charges applicable to the berths kept vacant in addition to berth hire charge for the berth occupied by the vessel.

5. Penal charges for unauthorised occupation of berths; without prejudice to any other course of action in accordance with the relevant provisions of law, rules and regulations, berth hire charges for the unauthorised occupation of a berth in the Port shall be levied at the following rates after giving 8 hours advance intimation or notice in writing to the agents / owner of the vessels concerned:

(i).	Upto 3 days or part thereof	:	At three times the rate of berth hire charges
(ii).	Above 3 and upto 6 days	:	At four times the rate of berth hire charges
(iii).	Above 6 and upto 9 days	:	At five times the rate of berth hire charges
(iv).	Above 9 days and so on for subsequent days	:	At six times the rates of berth hire charges and so on

6. No berth hire shall be levied for the period when the vessels idle at its berths due to break down of Port equipments or power failure or any other reasons attributable to the Port.

7. **Priority Berthing or Ousting priority**

- (i). For providing priority berthing to any vessel, a fee equivalent to berth hire charges for single day (24 hours) or 75% of the berth hire charges calculated for a total period of actual stay of the vessel at the berth, whichever is higher, shall be charged.

- (ii). For providing ousting priority berthing to any vessel, a fee equivalent to berth hire charges for single day (24 hours) or 100% of the berth hire charges calculated for a total period of actual stay of the vessel at the berth, whichever is higher, shall be charged.

- (iii). The fee for according 'priority' /ousting as indicated above shall be charged from all vessels, except the following categories:

- (a). Vessels carrying cargo on account of the Ministry of Defence
 (b). Defence vessels coming on goodwill visits
 (c). Vessels hired for the purpose of Antarctica expedition by the Department of Ocean Development
 (d). Any other vessel for which special exemption has been granted by the Ministry of Shipping



8. Berth Reservation

- (i). A Shipping line requiring advance reservation for a container ship should give its scheduled arrival of ships at least 3 months in advance. In the case of other vessels, a minimum notice of 1 month should be given. The shipping line should also intimate the expected stay of the ship at the berth at the time of asking for berth reservation.
- (ii). A berth reservation equal to berth hire charges for single day (24 hours) or 25% of the berth hire for the expected stay of the ship at the berth, whichever is higher, will be charged.
- (iii). If the shipping line does not bring the ship at the pre-reserved time, then the berth reservation fee paid in advance will be forfeited.
- (iv). Liner ships should arrive within 6 hours of the commencement of the time reserved for the berths and non-liner ships should arrive within 24 hours of the time indicated for arrival of the ship.

CHAPTER - III

SCHEDULE OF WHARFAGE CHARGES

The rates to be paid for the use of wharves, jetties and landing places (hereinafter referred to as Wharfage dues) on goods landed at or shipped from the Port of New Mangalore shall be as specified below:-

3.1. Break-Bulk Cargo:

Sl. No.	Description of Cargo Break Bulk Cargo	Advalorem Rate	
		Foreign Rate	Coastal Rate
1.	Spices (cardamom, ginger, turmeric, coriander seed, pepper, chillies etc.	0.015%	0.008%
2.	Fish dried, fresh, salted preserved or frozen prawns, frog legs and lobsters preserved or frozen	0.059%	0.036%
3.	Yarn, cotton and wool raw, waste or manufactured staple fibre	0.059%	0.036%
4.	Arecanuts, beedi leaves and beedies, coffee instant coffee essence or powder, mangasite illuminates monazite bauxite rutile sand, sandal wood logs, and product, Tea, Coffee/ Coffee husk, tobacco.	0.074%	0.044%
5.	Asphalt, Bitumen	0.237%	0.142%
6.	Any other non-bulk items	0.296%	0.178%

Note:

Advalorem rates shall be based on FOB value for exports, CIF value for imports and the value as given in coastal bill of lading for coastal cargo.

3.2. Bulk Cargo:

Sl. No.	Cargo	Unit	Foreign (in ₹)	Coastal (in ₹)
1.	(a). Finished Fertilizers			
	MOP, Urea, DAP, NPK, CAN Ammonia Sulphate and any other Finished fertilizer	MT	25.90	15.54
	(b). Fertilizer Raw Materials			
	Sulphate/ Rock phosphate	MT	29.60	17.76
2.	Food Grains and Food Products			
	(a). Rice, Wheat, Maize, Pulses (bags/bulk)	MT	29.60	17.76
	(b). Sugar, Sugarcandy or Cube	MT	29.60	17.76



Sl. No.	Cargo	Unit	Foreign (in ₹)	Coastal (in ₹)
3.	P.O.L.			
	(a). Motor spirit	MT	51.80	51.80
	(b). Superior Kerosene Oil	MT	51.80	51.80
	(c). Diesel Oil	MT	51.80	51.80
	(d). Crude Oil	MT	51.80	51.80
	(e). Naphtha	MT	51.80	51.80
	(f). Furnace Oil	MT	51.80	51.80
	(g). Grease	MT	48.10	48.10
	(h). Asphalt/ coaltar/ bitumen	MT	48.10	48.10
	(i). Others	MT	51.80	51.80
4.	Other Chemicals			
	(a). Ammonia Liquid or Gas	MT	51.80	31.08
	(b). Phosphoric Acid and Styrene Monomer	MT	44.40	26.64
	(c). Sulphuric Acid	MT	44.40	26.64
	(d). Orthoxylene	MT	44.40	26.64
	(e). Ethylene Dichloride (E.D.C.)	MT	44.40	26.64
	(f). Cyclohexanone	MT	44.40	26.64
	(g). Cumene	MT	44.40	26.64
	(h). Methanol	MT	44.40	26.64
	(i). Phenol	MT	44.40	26.64
	(j). Caustic Soda Dye	MT	44.40	26.64
	(k). Acids/ Chemicals of all kinds in crystals liquids not specified above	MT	44.40	26.64
5.	Edible Oil & Other Liquids			
	(a). Palm oil, vegetable oil etc.	MT	37.00	22.20
	(b). Oil seeds	MT	37.00	22.20
	(c). Molasses	MT	37.00	22.20
6.	Iron & Steel Materials			
	(a). Iron and Steel Plates, Pipes, tubes, steel wire coils (irrespective of the weight of individual piece)	MT	37.00	22.20
	(b). Iron and steel scraps and drops	MT	29.60	17.76
	(c). Pig iron/ Sponge iron	MT	37.00	22.20
	(d). Plant and Machinery	MT	96.20	57.72
7.	Granite in any form	MT	33.30	19.98
8.	Ores/ Metals			
	(a). Manganese ore	MT	22.20	13.32
	(b). Perlite ore	MT	22.20	13.32
	(c). Chromate ore	MT	22.20	13.32
	(d). Bentonate & ballclay sand/ clay of any Class	MT	14.80	8.88
	(e). Rock sand	MT	20.00	12.00
	(f). Zinc concentrate	MT	77.70	46.62
	(g). Copper concentrate	MT	29.60	17.76
	(h). Copper cathode	MT	92.50	55.50
	(i). Copper wire, rods, cables, bars blocks	MT	74.00	44.40
	(j). Limestone	MT	25.90	15.54
	(k). Aluminium and Tin	MT	81.40	48.84
	(l). Iron ore other than KIOCL	MT	25.90	25.90
	(m). Any other ore in bulk	MT	25.90	15.54
	(n). Slag	MT	25.00	15.00
9.	Gas			
	LPG/LNG or any gas in any other form	MT	133.20	79.62
10.	Timber & Allied Products			
	(a). Timber of all kinds of logs including plywood	CBM	37.00	22.20
	(b). Wood pulp and wood chips	MT	29.60	17.76
	(c). Papers of all kinds including waste papers	MT	37.00	22.20



Sl. No.	Cargo	Unit	Foreign (in ₹)	Coastal (in ₹)
11.	Coal and Coke in bulk			
	(a). Thermal Coal	MT	18.50	18.50
	(b). Coal (other than Thermal Coal) and coke	MT	18.50	11.10
12.	Cement			
	(a). upto 3.00 lakh tones per annum	MT	44.40	26.64
	(b). Above 3.00 lakhs tones and upto 4.00 lakhs Tones per annum	MT	37.00	22.20
	(c). Above 4.00 lakh tones per annum	MT	29.60	17.76
13.	Gypsum/ Clinker	MT	22.20	13.32
14.	Others			
	(a). Raw cashew nuts	MT	25.90	15.54
	(b). Cashew kernels	MT	40.70	24.42
	(c). Cashew shell liquid	MT	29.60	17.76
	(d). Coir and coir products	MT	40.70	24.42
	(e). Ferro silicon	MT	29.60	17.76
	(f). Defence stores equipments	MT	96.20	57.72
	(g). Oil cakes and fodder of all kinds	MT	22.20	13.32
	(h). Unaccompanied personal effects	MT	74.00	44.40
	(i). Baggages accompanying passengers or Seamen free and personnel baggages, Horses and carriages/ accompanying Military personnel moving on duty Embarking from vessels and the Animal meals for providing food for them.		Free	Free
	(j). Mill Scale	MT	35.00	21.00
15.	Salt	MT	22.20	13.32
16.	Rice Bran	MT	22.20	13.32
17.	Tapioca chips, flour starch, waste & tamarind Seed powder in bags	MT	37.00	22.20
18.	Onion	MT	22.20	13.32
19.	Unenumerated goods other than the above specified	MT	48.10	28.86

M.T = Metric Tonne

CBM = Cubic metre

Notes:

- No export cargo shall be admitted into the Port premises without the permission in writing of the authorized official of the Port. Normally export cargo for a vessel shall be admitted only after the vessel is opened for export.
- Wharfage shall be in addition to any charges towards rent for storage of goods in the quays, warehouses, transit sheds or landing places of the Port of New Mangalore.
- Request for amendment in import / export applications or documents shall be accompanied by a fee of ₹10/- which shall not be refunded.
- The cargo/container related charges for all coastal cargo/containers, other than thermal coal, PCL including crude oil, iron ore and iron ore pellets, should not exceed 60% of the corresponding charges for normal cargo/container related charges.
- Method of calculating wharfage:**
 - All goods intended for shipment shall be assessed on export application and wharfage shall be paid before the goods are shipped.
 - All goods landed within the limits of the Port of New Mangalore shall be assessed on import application and the wharfage shall be paid before the goods are delivered.



- (iii). The wharfage dues shall be calculated on the manifested tonnage of the vessel's cargo in the case of imports, iron and steel scrap, ores and other goods in bulk.
- (iv). In the case of cargo other than that mentioned in sub-rule (iii), the wharfage shall be calculated in accordance with the unit specified against each item of the goods in the Schedule of Wharfage given above.
- (v). The wharfage dues shall be calculated on the total tonnage of each item of goods. For this purpose, the gross and not the net tonnage of each package as specified in the relative invoice or other shipping document shall be taken, subject to fresh check by the Port if the circumstances so require. In the absence of these documents or in the absence of the specification of gross tonnage therein the tonnage arrived at by actual test-check shall be taken as gross tonnage.
- (vi). For the purpose of calculating the dues in the Scale of Rates –
 - (a). One unit by weight means 1 tonne (1000 kilograms)
 - (b). One unit by measurement means 1 cubic meter
 - (c). One unit by liquid measurement (capacity) means 1000 liters.
- (vii). In calculating the gross weight or measurement by volume or capacity of an individual item, fractions upto and including 0.50 shall be reckoned as 0.50 and fractions over 0.50 shall be reckoned as one unit.
- (viii). Assessment on packages containing articles of a miscellaneous character shall be levied based on the rate applicable for individual cargo items.
- (ix). Where marks are indistinguishable and the cargo is landed in bulk or under such conditions that the tonnage is not readily ascertainable in that case:
 - (a). if the cargo is landed at the Wharf, the tonnage shall be ascertained by taking the actual measurement and converting it at one cubic meter to a tonne,
 - (b). if the cargo is conveyed by craft from a vessel at the outer roads, the licenced carrying capacity of the craft shall be taken as the tonnage.
- (x). Before classifying any cargo as 'unenumerated goods' the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in the Schedule given above.

6. Refund:

No refund of dues shall be made in respect of goods lost over board or jetties within the limits of the Port. However, in the case of goods thrown over board or jettisoned but not salvaged, refund of wharfage will be considered on production of a certificate from the authorized official of the Port Trust, justifying the circumstances under which the goods were jettisoned or thrown over board. In case the goods are salvaged and landed within the port limits, the wharfage dues would be charged on a pro-rate basis.

7. Porterage (Handling of Cargo) at wharf or jetties

- (i). The Port shall not assume custody of any export cargo and handle the same at the wharf or jetties.
- (ii). The Port may assume custody at shore and convey to transit space and sort for delivery all import general cargo and other cargo for which overside delivery direct from ships is permitted in special case by the Port and the Customs except the bulk cargo and for this service in addition to wharfage, the following charges shall be levied namely,
 - (a). Actual labour charges incurred by the Port plus 20% overhead



- (b). Crane hire charges as per rates prescribed in the Scale of Rates, if Crane is provided by the Port
 - (c). Fork lift hire charges as per rates prescribed in the Scale of Rates, if Forklift is provided by the Port
 - (d). Overtime allowance admissible
- (iii). In case of ship to shore transfer and transfer from quay/ to storage yard operations in respect of coastal cargo eligible for concessional tariff, 60% of the rates prescribed in the above schedule will be levied.

8. Tranship Goods

- (i). Cargo landed on and shipped from the wharf, except as otherwise provided shall be charged full wharfage. The transshipment charges in respect of coastal cargo / vessel shall be at the concessional rate as prescribed for coastal cargo.
- (ii). Though cargo originally manifested at Port of shipment for transshipment landed on the Wharf and cargo manifested for local and subsequently amended at the Port of New Mangalore for transshipment shall be charged 85% of the applicable wharfage
- (iii). Cargo discharged *overside* or shipped *overside* (ship to ship) shall be charged 50% of the applicable wharfage rate except in respect of food grains manifested for Indian Ports and transhipped to smaller vessels from cargo tankers or bulk carriers within the Port limits.
- (iv). Wharfage shall be levied at Re.1/- per tonne on food grains manifested for Indian Ports and transhipped into a smaller vessel from tanker or bulk carrier at the Port. This charge shall not be levied in respect of transhipped quantity landed at this Port.
- (v). In case cargo from foreign Port lands at NMPT for subsequent transshipment to an Indian Port on coastal voyages, 50% of the transshipment rate prescribed for foreign going and 50% of that prescribed for coastal leg shall be levied.

9. Goods exempted from wharfage

The following categories of goods shall be exempted from the wharfage charges:

- (i). Bonafide consumable/non consumable ship stores.
- (ii). Passenger and seaman's bonafide baggage and personal effects accompanying them.
- (iii). Empty gunnies and twines sent to ship to facilitate landing or loading of cargoes in bulk or for replacing wet or torn bags.
- (iv). Goods consigned to or by the New Mangalore Port Trust
- (v). Postal Mail bags.



CHAPTER - IV

CONTAINER CHARGES

4.1 . Wharfage charges

Sl. No.	Container Size	Rate per container			
		Empty		Loaded	
		Foreign (in ₹)	Coastal (in ₹)	Foreign (in ₹)	Coastal (in ₹)
1.	Upto 20'	44.40	26.64	222.00	133.20
2.	Above 20' and upto 40'	66.60	39.96	333.00	199.80
3.	Above 40'	88.80	53.28	444.00	266.40

4.2 . Storage charges

Sl. No.	Container Size	Rate per container per day or part thereof	
		Foreign(in US \$)	Coastal (in ₹)
1.	Upto 20'	0.214	9.53
2.	Above 20' and upto 40'	0.321	14.39
3.	Above 40'	0.428	19.07

Notes:

1. 1 day free period shall be allowed on containers whether landed/shipped either empty or stuffed
2. Free period prescribed above excludes Customs notified holidays and port's non-working days.
3. The storage charges on abandoned FGL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the date of landing of container, whichever is earlier subject to the following conditions:
 - (i). The consignee can issue a letter of abandonment at any time
 - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
 - (a). the line shall resume custody of container alongwith cargo and either take back it or remove it from the Port premises; and
 - (b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
 - (iii). The container Agent/MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.
 - (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the date the Custom orders for release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the Port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the date of such removal.
4. Storage charge on container shall not accrue for the period when the N.M.P.T is not in a position to deliver ship container when requested by the user



5. If operational area is licensed on rental terms to users, storage charge on containers/demurrage on cargo stored thereat shall not be levied again.

4.3 . Re-Stew charges:

Container manifested for other destination, unloaded and reloaded in the same vessel in the same voyage, the following rates will be levied:

Sl. No.	Container Size	Rate per container			
		Empty		Loaded	
		Foreign (in ₹)	Coastal (in ₹)	Foreign (in ₹)	Coastal (in ₹)
1.	Upto 20'	22.20	13.32	37.00	22.20
2.	Above 20' and upto 40'	33.30	19.98	55.50	33.30
3.	Above 40'	44.40	26.64	74.00	44.40

General Notes:

- Wharfage on containers is collected irrespective of the contents of the containers.
- The stuffed cargo removed from the container and cargo meant for stuffing in the container stacked in transit area other than the space allotted on lease for that purpose will be liable for demurrage as applicable to the cargo specified in Chapter V Demurrage.
 - Containerised import cargo**
For levy of demurrage, the free days for import cargo destuffed from the container shall count from the date following the date of destuffing.
 - Containerised Export cargo**
For levy of demurrage, the free days for export cargo shall be reckoned from the date on which cargo is admitted in the transit area and demurrage leviable, if any shall be computed from the day following the completion of free days till the cargo has been stuffed into containers.
- The applicant shall accept all risks and responsibilities for goods stored at the rental space allotted and shall make his own arrangement for security of the goods stored in such spaces. Hire charges for port equipment whenever utilised by the shipper will be charged separately according to the Scale of rates in force from time to time.

4.4 . Hire charges of Spreaders for Container Handling:

Sl. No.	Description	Rate per hour or part thereof
1.	20' Spreader	111.00
2.	40' Spreader	166.50

4.5 . Container Handling charges

Sl. No.	Container Size	Rate per container			
		Empty Container		Loaded Container	
		Foreign (in ₹)	Coastal (in ₹)	Foreign (in ₹)	Coastal (in ₹)
1.	Upto 20'	90.28	54.17	189.44	113.68
2.	Above 20' and upto 40'	135.42	81.25	284.16	170.50
3.	Above 40'	180.56	108.34	378.88	227.33

4.6. Electricity and monitoring charges for Reefer container

Sl. No.	Container Size	Rate per 4 hours or part thereof per container
1.	Upto 20' containers	₹117.00
2.	Above 20' and upto 40' containers	₹142.00
3.	Above 40' containers	₹167.00



Notes:

1. No private equipment shall be permitted into the port premises without prior permission of the NMPT.
2. The hire charges shall commence from the time the equipment is made available for use.
3. If the equipment is detained without use, detention charges shall be leviable at the rate of ₹100 per hour or part thereof.
4. A charge of ₹300 per equipment will be recovered if a requisition is cancelled in writing before the commencement of the period of hire, provided no such charges shall be recovered if the notice of cancellation was received before action was taken by the NMPT to comply with the requisition. In case where no written notice of cancellation is received before the commencement of the period of hire or where the equipment is used only for a portion of the period applied for, charges payable for the full period of requisition shall be recovered. If the NMPT is unable to supply the equipment to suit their convenience either for the entire period of requisition or for a part thereof, no charge shall be recovered for the period of non-supply of the equipment.
5. (i). The hirer shall not put on the equipment hired or cause to be put on them by his agents or employees or other persons working under such hirer, any load heavier than the lifting capacities of the said equipment.
(ii). The hirer shall be liable to pay a penalty of ₹500 per every breach of the above condition whenever he is found guilty of such breach by the NMPT.
(iii). The cost of damage, if any, caused to the equipment by its being used in contravention of the above condition, shall, in addition to the penalty referred to above, be recovered from the hirer and shall include even the replacement value of the equipment if the damage caused makes such a recovery necessary. On admittance of the claim of damages of the equipment from the Insurance Company, the same shall be refunded to the hirer from whom the cost of the damage was collected.
6. The NMPT shall not be responsible to the hirer or any person for any loss or damage or injury to the life of the person arising directly or indirectly from the use of the equipment during the period of its supply for hire. The hirer shall indemnify the NMPT against all loss or damage or injury to life arising directly or indirectly from the use of the equipment during the period of the supply on hire to any property belonging to the Port including the equipment, or to any other person or property. The liability of the hirer shall not be affected by the fact that such loss or damage or injury to life may have arisen due to any act or default of any employee of the Port. The hirer shall also indemnify the NMPT for all liabilities under the Workmen's Compensation Act, 1923.
7. When equipment are requisitioned for a specified number of hours but are made available not continuously but at different times to suit the convenience of the Port, charges shall be calculated as if the hire was for a continuous period by totaling up the broken periods of work instead of rounding off each spell of work separately.
8. In case of breakdown of equipment due to mechanical defects, the period taken to repair shall be deducted in calculating the hire charges.
9. Wherever separate rate for coastal container handling are not prescribed, the admissibility and the extent of concession will be governed by clause (v) of Schedule 1.2-General Terms & conditions.



CHAPTER - V

DEMURRAGE

5.1.1 Imports

Demurrage charges at the following rates shall be levied in respect of all goods left in the port's Transit sheds or open space after the expiry of the free days and free periods till their delivery is effected.

Sl. No.	Classification	Unit	Rate
1.	Goods lying in the Transit sheds or in the open transit space except on which the rate of wharfage dues is fixed for each or by number	Per wharfage unit per day	(a). 1 st week ₹3.00 (b). 2 nd week ₹5.00 (c). Succeeding period ₹7.00
2.	Goods lying in the transit shed on which wharfage is charged on advalorem basis	Per CBM per day	(a). 1 st week ₹3.00 (b). 2 nd week ₹5.00 (c). Succeeding period ₹7.00

Notes:

1. Free days

- (i). Free days prescribed below shall exclude customs holidays and Port's non working days.
- (ii). Seven working days (excluding customs holidays and Port's non-working days) following the date of the complete discharge of the goods from the vessel on to jetties, quays or wharves shall be allowed as free period.

When goods are landed from the vessel into lighters, barges or other floating craft, the seven working days shall be calculated from the date of complete discharge of goods from the lighters, barges or other floating craft on the jetties, quays or wharves.
- (iii). In the case of salvaged goods, the free days shall be reckoned from the day following the date of notification of salvage by the Receiver or wrecks in the Official Gazette of Karnataka State.

2. Free period:

The following free periods shall be allowed in addition to the free days prescribed above:

- (i). Periods during which the goods are detained by the Collector of Customs for examination under sub-section (3) and (4) of section 144 of the Customs Act 1962 (152 of 1962), other than the ordinary process of appraisement and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of importers, plus one working day. The Customs holidays shall also be treated as free periods in addition.
- (ii). Periods during which the goods are detained by any public Health Authority whether cleared or destroyed.

3. Survey of Goods

If the goods are detained for survey, then a period not exceeding seven days excluding Customs holidays and Port's non-working days, from the date of completion of discharge from the vessel may be excluded while calculating the demurrage charges provided the goods are removed within twenty four hours after the completion of the survey.



4. **Empty or partially empty packages.**

Demurrage charges shall be payable on packages landed empty or partially empty.

5. **Demurrage charges on Sundays and Port Holidays**

Once demurrage charges begin to accrue, no allowance shall be made for Sundays and port holidays

6. **Delivery of goods**

Goods shall not be delivered to owners or consignees unless all dues leviable thereon, including demurrage charges are paid.

7. **Congestion of goods**

If at any time the Port apprehends a serious congestion in the transit area which may affect rapid transit of goods through the Port, it may direct the owners or consignees of any specified goods to remove such goods from the port premises within a specified period.

8. If the goods are not removed within a specified period, the Port may cause them to be removed and restocked in any other place within the Port premises at the expense and the sole risk of the owner or consignees. Goods so removed shall be charged demurrage charges at the rates prescribed in the Schedule of Demurrage (Imports) at (c) in Sl.No.1 or 2 whichever is applicable.

5.1.2. **Exports**

Demurrage at the rate of ₹3.00 per wharfrage unit and or at ₹3.00 per CBM per day for all cargo charged at Advalorem rate, shall be levied after the expiry of the free days,

Notes:

1. **Free days**

- (i). Free days shall exclude the Customs holidays and port non-working days
- (ii). All cargo except salvaged goods (a) Twenty one days free days(excluding Customs holidays and Port's non-working days) from the actual date of the receipt of goods in the transit area. (b) From the date the vessel is berthed for working cargo to the date of the vessel completes loading.
- (iii). For salvaged goods, three free days (excluding Customs holiday and port's non-working days) from the date on which the goods were actually salvaged.

2. **Shut out cargo**

- (i). In the case of goods shut out from shipment and if removed outside, in addition to the free days mentioned in Note 1, the working day next to the date of completion of taking in of the exports by the vessel will also be allowed as a free day.
- (ii). In the case of goods shut out by one vessel and subsequently shipped by another vessel the free days shall count from the date of the first shut out, upto ten days excluding Customs holidays and port's non-working days. The total free period, however, shall not be more than 21 days as specified in Note 1.
- (iii). Cargo intended for export but not actually shipped will be allowed free days up to only seven days excluding Customs holidays and port's non-working days from the actual date of receipt of the goods in the transit area.



3. **Free periods**

In addition to the free days prescribed above, the period during which goods are detained by the Collector of Customs for examinations under Sub-section (3) and (4) of Section 17 and for chemical test under Section 144 of the Customs Act, 1962, other than the ordinary processes or appraisement and certified by the Collector of Customs to be not attributable to any fault or negligence on the part of the exporters, plus one working day shall also be allowed as free period. The Customs holidays shall also be treated as free periods in addition.

4. **Congestion of goods**

If at any time the Port apprehends a serious congestion in the transit sheds or other spaces allotted for the goods in transit to the detriment of the rapid transit of goods through the Port, it may direct the owner or consignor or Agents of any specified goods to remove such goods from the Port premises within a specified period. If the goods are not removed within such period, Port may cause them to be removed and restacked in any other place within the Port premises at the expense and the sole risk of the owner or shipper/agents. Demurrage charges shall be levied on such goods in accordance with the rate specified for demurrage on export cargo.

5. **Transshipment of Goods**

The free period shall be allowed for the transshipment cargo up to 28 days excluding Customs holiday and port's non-working days from the date of receipt of the goods.

General Notes:

1. Demurrage charge on both import and export cargo shall not accrue for the period when the NMPT is not in a position to deliver cargo when requested by the user
2. If operational area is licensed on rental terms to users, demurrage charge on cargo stored there-at shall not be levied again.

CHAPTER - VI
OTHER CHARGES

6.1. **Charges for supply of water**

Description	Rate per K.L./Tonne	
	Foreign-going vessels (in US \$)	Coastal vessels (in ₹)
Water Charges	3.50	93.55

6.2. **Charges for use of bunkering facility alongside berths**

Sl. No.	Description	Rate per M.T. (in ₹)
1.	For providing bunkers alongside berth(s) through fixed pipelines or loading arms or flexible hoses of users or through mobile trucks/trainers	27.00

6.3. **Marshalling yard usage charges**

Sl. No.	Description	Rate per M.T. (in ₹)
1.	Use of Marshalling yard only	8.00
2.	Use of Marshalling yard including private siding inside the wharf	10.00



6.4. Fees for issue of Licence to C&F Agency

Sl. No.	Description	Rate (in ₹)
1.	New Licence	5000.00 for two calendar years
2.	Renewal within the period of licence for a further period of two calendar years	1000.00 per licence
3.	For issue of duplicate licence when the original is lost or defaced	200.00 per licence
4.	For temporary licence for a period not exceeding one year	1000.00 for one calendar year

Note:

Renewal of licence shall be effected only if the licence was utilised and transacted activities at the port during the previous licence period. Failure to renew the licence within the specified period entails cancellation of the licence.

6.5. Fees for issue of licence to Steamer Agency

Sl. No.	Description	Rate (in ₹)
1.	New Licence	5000.00 per licence
2.	Renewal within the period of licence for a further period of two calendar years	1000.00 per licence
3.	For issue of duplicate licence when the original is lost or defaced	200.00 per licence
4.	For temporary licence for a period not exceeding one year	1000.00 for one calendar year

Note:

Renewal of licence shall be effected only if the licence was utilized and transacted activities at the port during the previous licence period. Failure to renew the licence within the specified period entails cancellation of the licence.

6.6. Charges for hire of launches and tugs within the limits of the Port

I. Tugs

Sl. No.	Name of the vessel	Rate per hour or part thereof	
		Foreign-going vessels (in US \$)	Coastal vessels (in ₹)
1.	22.50 T.B.P.	612.75	16,379.00
2.	32.50 T.B.P.	1,187.20	31,734.00
3.	50.00 T.B.P.	1,761.64	47,089.00

Note:

For use of the above tugs by Indian Navy and Coast Guard only 60% of the rate prescribed above shall be levied.

II. Launches

Sl. No.	Name of the vessel	Rate per hour or part thereof	
		Foreign-going vessels (in US \$)	Coastal vessels (in ₹)
(a).	Multi purpose vessel: M.V. Malya.	1148.90	30,710.00
(b).	Mooring Launches	114.89	3,071.00
(c).	Pilot Launches	291.05	7,760.00
(d).	Survey Launch	230.82	6,170.00



6.7. Hire charges for cargo handling equipment

Sl. No.	Equipment	Rate per hour or part thereof (in ₹)	
		Foreign-going (in ₹)	Coastal (in ₹)
1.	Coles Husky 680S of 75 MT capacity	2,100.00	
2.	TIL - GROVE 75 MT capacity Mobile Crane (RT 880)	3,618.00	
3.	10 MT capacity Fork Lift Truck	530.00 subject to a minimum of ₹2120.00	
4.	Tata Truck Model LPT 909/36	417.00 subject to a minimum of ₹3336.00	
5.	Escorts Model 8100, 10 MT capacity Hydraulic crane	650.00 subject to a minimum of ₹1300.00	
		Foreign-going (in ₹)	Coastal (in ₹)
6.	Hindustan 2021 Pay loader	790.00	468.00
7.	3 Ton Forklift Trucks	90.00 subject to a minimum of ₹180.00	54.00 subject to a minimum of ₹108.00

Notes:

1. No private equipment shall be permitted into the port premises without prior permission of the NMPT.
2. The hire charges shall commence from the time the equipment is made available for use.
3. If the equipment is detained without use, detention charges shall be leviable at the rate of ₹100 per hour or part thereof.
4. A charge of ₹300 per equipment will be recovered if a requisition is cancelled in writing before the commencement of the period of hire; provided no such charges shall be recovered if the notice of cancellation was received before action was taken by the NMPT to comply with the requisition. In case where no written notice of cancellation is received before the commencement of the period of hire or where the equipment is used only for a portion of the period applied for, charges payable for the full period of requisition shall be recovered. If the NMPT are unable to supply the equipment to suit their convenience either for the entire period of requisition or for a part thereof, no charge shall be recovered for the period of non-supply of the equipment.
5. (i). The hirer shall not put on the equipment hired or cause to be put on them by his agents or employees or other persons working under such hirer, any load heavier than the lifting capacities of the said equipment.
(ii). The hirer shall be liable to pay a penalty of ₹500 per every breach of the above condition whenever he is found guilty of such breach by the NMPT.
(iii). The cost of damage, if any, caused to the equipment by its being used in contravention of the above condition, shall, in addition to the penalty referred to above, be recovered from the hirer and shall include even the replacement value of the equipment if the damage caused makes such a recovery necessary. On the recovery of the claim of damages of the equipment from the Insurance Company, the amount admitted by the Insurance Company shall be refunded to the hirer.
6. The NMPT shall not be responsible to the hirer or any person for any loss or damage or injury to the life of the person arising directly or indirectly from the use of the equipment during the period of its supply for hire. The hirer shall indemnify the NMPT against all loss or damage or injury to life arising directly or indirectly from the use of the equipment during the period of the supply on hire to any property belonging to the Port including the equipment, or to any other person or property. The liability of the hirer shall not be affected by the fact that such loss or damage or injury to life may have arisen due to any act or default of any employee of the Port. The hirer shall also indemnify the NMPT for all liabilities under the Workmen's Compensation Act, 1923.



7. When equipment are requisitioned for a specified number of hours but are made available not continuously but at different times to suit the convenience of the Port, charges shall be calculated as if the hire was for a continuous period by totaling up the broken periods of work instead of rounding off each spell of work separately.
8. In case of breakdown of equipment due to mechanical defects, the period taken to repair shall be deducted in calculating the hire charges.
9. Wherever coastal rates are not prescribed for cargo/container handling, the admissibility and extent of concession will be governed by clause (v) of Schedule 1.2 – General Terms and conditions.

6.8. Charges for use of Harbour Mobile Cranes installed by the private operators:

(i). For Dry Bulk Cargo

Average daily crane performance (in Metric Tonne)	Ceiling rate per tonne (in ₹)	
	Foreign	Coastal
9500-10499	28.31	16.98
10500-11499	29.58	17.98
11500-12499	31.64	18.98
12500	33.31	19.99
12501-13500	34.97	20.98
13501-14500	36.64	21.98
14501 – 15500	38.34	23.00

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes and for the 2nd thousand tonnes the rate was enhanced to 110% of the base rate. The rate for third thousand tonnes was arrived by enhancing the base rate by 115%. The same methodology shall also be adopted to calculate the rate beyond 15500 tonnes. Likewise, ceiling rates for performance below 9500 tonnes shall be calculated by reducing the base rate accordingly.

(ii). For Break-bulk cargo:

(A). Steel and Bagged Cargo

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in ₹)	
	Foreign	Coastal
5000-5999	65.95	39.57
6000	69.43	41.66
6001-7000	72.90	43.74

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 7000 tonnes. Likewise, ceiling rates for performance below 5000 tonnes shall be calculated by reducing the base rate accordingly.

(B). Others

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in ₹)	
	Foreign	Coastal
2750-3749	105.59	63.35
3750	111.15	66.70
3751-4750	116.70	70.02

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate



beyond 4750 tonnes. Likewise, ceiling rates for performance below 2750 tonnes shall be calculated by reducing the base rate accordingly.

Notes:

- (i). The formula for calculation of average berth-day out put is as follows:

$$\frac{\text{Total Quantity loaded / unloaded by the MHC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hours}$$
- (ii). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.
- (iii). If one MHC works with another MHC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the MHC's load meter.
- (iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by MHC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (v). In case of stoppages of operation of MHC for more than two hours at a stretch for reasons not attributable to the MHC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of MHC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the MHC. All stoppages in loading / unloading operations during working of MHC are required to be certified by the Stewards of the vessel in the daily vessel performance report.
- (vi). In case shifting of a vessel becomes necessary due to breakdown / non-performance of MHC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to a penalty of Rs.1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel's agent while the penalty will be retained by the port.
- (vii). In case of dispute on the average output, the decision of the port trust will be final and binding.

6.9. Miscellaneous Charges

L. Charges for taking photographs or shooting films in the harbour premises:

Sl. No.	Classification	Rate (In ₹)
1.	For shooting of films by film making company or private parties	10,000 per day or part thereof
2.	For still photographs of export/import cargoes	400 per day or part thereof
3.	For taking photographs of the parties or of the crew on Board the ships and in case not covered in clauses (1) & (2) above	50.00 per each time for each party

Notes:

- 1. The permission shall be issued by the NMPT or any official authorised by it.
- 2. Still photographs taken and shooting film by the State and Central Govt. for education and scientific purposes and in connection with Govt. Publicity and shipping activities are exempted from paying charges.



3. Any other cases of taking still photographs and shooting of films within the perimeter wall or in the Port premises shall be at the discretion of the NMPT on merit of each case.
4. The charges shall be paid in advance and no refund of such payments shall be allowed for any failure/cancellation of the programme.
5. If the cancellation of programme is at the instance of the Port or under extraordinary circumstances the charges paid shall be refunded subject to the claim in time.
6. The hire charges for any craft and or appliance of the Port if any, that are supplied and used by the film making company or by those taking photographs shall be levied as per the respective provisions of the Scales of Rates in addition to charges payable under this scale.

II. Fees of issue of passes/licence for entry into the wharf:

Sl. No.	Classification	Rate (in ₹)
1.	For issue of temporary pass for admission into the Harbour (per head per day)	2.00
2.	Temporary pass for bus, authorized trucks carrying passengers (per vehicle per day)	50.00
3.	Temporary pass for trucks/trailers/tippers (per day)	10.00
4.	Temporary pass for Car/Jeep/Van (per day)	5.00
5.	For private cargo handling equipments (per day)	75.00
6.	Issue/renewal of permanent photo pass (per head)	100.00
7.	Issue of duplicate photo pass (per head)	250.00
8. (a).	Permanent vehicle pass for trucks/trailers/tippers	
	For six months	500.00
	For one year	800.00
	For duplicate	250.00
(b).	Permanent vehicle pass for car/jeep/van	
	For six months	380.00
	For one year	600.00
	For duplicate	250.00
9.	Permanent pass for private cargo handling equipments	
	For six months	2500.00
	For one year	4000.00
10.	Entry fees for cargo trucks entering the Bounded area of the Port - payable by C&F Agent per entry	10.00

Notes:

1. The licence shall be issued by the NMPT or any official authorized by it.
2. The payment of the charge will not automatically entitle a person to get a pass.
3. The temporary pass shall be valid for a day for which it is obtained from zero to zero hours.
4. The NMPT may issue temporary passes free of charge to the distinguished guests to the Port, visiting staff of other Major Ports and other Govt. Officers/officials connected with the Port Trust and visiting the Wharf on official duty. No charges shall also be collected from the employees of the Port holding valid identity cards and other shipping interests holding valid photo passes issued by the NMPT.
5. Only persons who have harbour entry passes will be issued with temporary vehicles licence on payment of the above prescribed fee and it is not transferable.
6. No refund will be allowed for the charges once paid for temporary vehicle licences issued by the Port.



7. Drivers of vehicles (with permanent licence) are exempted from the payment for entry into the Wharf.
8. No refund will be allowed for the charges once paid for the licences issued for the vehicles covered by item above for unexpired period of licence.
9. Failure to apply for the renewal of the annual or half yearly licence within 15 days, before the day of expiry thereof may entail cancellation of the licence or levy of penalty of ₹30/- per vehicle in addition to the renewal fee.
10. A fee of ₹30/- shall be charged for transfer of each annual or half yearly licence due to change of ownership of the carriers.
11. A sum of ₹30/- shall be charged for the issue of a duplicate annual or half yearly licence when the original is defaced or illegible or is lost.
12. Vehicles i.e. carriers of goods belonging to the New Mangalore Port Trust and other Major Port Trusts alone shall be exempted from holding a licence.
13. Any other vehicles not covered by above may be exempted from charge under the scale of Rates at the discretion of the NMPT.
14. No refund is permissible for the unexpired period of licence.
15. Whenever damage to the NMPT property is caused by any vehicle plying within the NMPT foreshore premises, the owner of the vehicle shall accept liability thereof and pay the damages resulting therefrom.

III. Fees for the hire of weighing scale and for the issue of certificates of weights:

(1).	For hire of weighing scales	₹1.00 per tonne part thereof
(2).	For issue of certificate of total tonnage of cargo	₹3.00 per tonne or part thereof for weightment of consignment (i.e. for goods covered by one application) subject to a minimum of ₹15/- per certificate

Notes:

1. The attendant labour shall be supplied by the parties concerned in all cases.
2. Charges shall be levied in accordance with the above scale when it is necessary for the Port to weigh goods, e.g. for the purpose of assessing the amount of wharfage payable in respect of the goods.
3. No refund of hire charges shall be allowed in case a notice of cancellation of requisition is not sent to the authorised officer of the NMPT in writing so as to reach him at least 2 hours prior to the commencement of the period of hire.
4. A fee of ₹10/- each shall be levied for a duplicate certificate of payment issued by the port authorities.

IV. Charges for the use of weigh bridges:

(1).	Weightment of cargo on the Port Lorry weigh bridge	: ₹15 per truck both ways.
(2).	For issue of weighing Certificate	: ₹25 per Certificate in addition to the charge prescribed at (1) above.

Notes:

1. The weighbridge shall be used only for weighing lorries or carts etc, with or without loads.



2. The fee under item (1) above shall cover hire charges of passing the cart or lorry etc, both empty and loaded over the weighing platform. The fee under item (2) above shall be payable in addition for the issue of certificate showing both the tare and loaded weight of the vehicle.
3. If any empty lorry after recording the tare weight on the ports weigh bridge within the wharf area is not brought to the ports weigh bridge during the same day with a load for recording the gross weight, a fee of ₹5.00 per lorry shall be payable by the party on whose behalf the tare weight is asked to be recorded.
4. The weigh bridge shall be manned by the NMPT
5. The NMPT shall not be responsible to the hirer or any person for any loss or damage or injury to life arising directly or indirectly from the use of the weigh bridge during the period of its hire. The hirer shall indemnify the NMPT against all loss or damage or injury to life arising directly or indirectly from the use of the weigh bridge to any other person or property. The liability of the hirer shall not be affected by the fact that such loss or damage or injury to life may have arisen due to any act or default of any employee of the port. The hirer shall also indemnify the NMPT for all liabilities under the Workmen's Compensation Act, 1923.

V. Charges for issue of Entry & Clearance Certificate:

Charges for issue of entry and clearance certificate to Master/Owner/Agent of vessel which calls at the Port for crew change and anchor within or beyond port limits without discharging or loading any cargo or passenger.	₹1000.00 per Certificate
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CHAPTER - VII

Levy for supply of cargo handling worker from Registered Cargo Handling Labour Wing for cargo handling operations

The charges for obtaining services of cargo handling worker from New Mangalore Port Trust Registered Cargo Handling Workers' Administrative Wing shall be as follows:

Sl. No.	Commodity	Foreign Cargo (₹ per tonne)	Coastal Cargo (₹ per tonne)	Benchmark productivity per Gang per shift (in tonnes)
1.	Iron Ore	25	25.00	1644
2.	Coal	25	15.00	1352
3.	Lime stone	25	15.00	1206
4.	Coke	35	21.00	792
5.	Granite	35	21.00	794
6.	MQP	40	24.00	872
7.	Maize	45	27.00	837
8.	Pig Iron	45	27.00	440
9.	DAP	50	30.00	958
10.	Rock Phosphate	50	30.00	944
11.	Urea	50	30.00	733
12.	Clay	30	18.00	220
13.	Machinery	190	60.00	316
14.	Timber	100	60.00	193
15.	Wood pulp	50	30.00	99
16.	Wheat	35	21.00	814
17.	Sulphur	40	24.00	594
18.	M. Logs	100	60.00	94
19.	Bentonite	45	27.00	840
20.	Yellow Peas	25	15.00	1034
21.	Container per TEU	450	270	82 TEU



22.	Other foodgrains and cereals	35	21.00	814
23.	Other Bulk Cargo not classified above	45	27.00	275
24.	Iron ore by HMC	4.83	4.83	4993
25.	Coal (mechanical by HMC)	4.75	2.85	4028
26.	Coke (mechanical by HMC)	6.93	4.16	2787
27.	Lime stone (mechanical by HMC)	5.38	3.23	3772
28.	Urea (mechanical by HMC)	12.48	7.49	1163
29.	MOP (Mechanical by HMC)	4.85	2.91	5422

Notes:

- (i). The rate indicated above is in addition to the actual incentives calculated as per the respective clauses of prevailing settlement / scheme and payable to the NMPT by the licensed stevedores.
- (ii). Following penalty / incentive in the rate prescribed will apply for performance below / higher than the benchmark level of productivity per gang/ shift prescribed in the schedule :

On achieving productivity higher than the benchmark level of productivity per gang/shift prescribed in the schedule	Rebate on the rate prescribed in the above schedule if the productivity achieved is higher than the benchmark productivity per gang/shift (in %)	On achieving productivity lower than the benchmark level of productivity per gang/shift prescribed in the schedule	Penalty on the rate prescribed in the above schedule if productivity is lower than the benchmark productivity per gang/shift (in %)
Upto 10% higher than the productivity prescribed	10%	Upto 10% lower than the productivity prescribed	10%
Above 10% to 20%	20%	Below 10% to 20%	20%
Above 20% to 30%	30%	Below 20% to 30%	30%



APPENDIX 14

MINIMUM GUARANTEED CARGO

Year	Minimum Guaranteed Cargo <i>(In Metric Tonnes Per Annum)</i>
1 st year of operation	2020000
2 nd year of operation	2360000
3 rd year of operation	2700000
4 th year of operation	3030000
5 th year to 28 th year of operation	3700000



APPENDIX 15

PERFORMANCE STANDARDS

- 1.1. The PPP operator would be allowed to charge tariff as determined in this proposal in the first year of operation. However, the operator would be free to propose a tariff along with Performance Standards (the "Performance Linked Tariff") from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1st April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (this will be the Tariff Cap). The Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.
- 1.2. The proposal for Performance Linked Tariff shall be submitted to TAMP along with a certificate from the independent engineer appointed for the Project indicating the achievement of Performance Standards in the previous 12 months (or for the actual number of months of operation in the first year of operation as the case may be).
- 1.3. The Performance Standards that would be applicable for determining the Performance Linked Tariff are provided in the table below.

Performance Standards

A. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for Coal. In case of dry and break-bulk cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity.

The Gross Berth Output shall be calculated as the total cargo handled from the ship during a month divided by the time spent by the ship at the terminal expressed in number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of 5 (five) hours shall be subtracted from the total hours.

The norms for Gross Berth Output for different categories of cargo are as follows:

Cargo Category	Norms (T/day)		
	Upto 50,000 DWT	50,000 – 80,000 DWT	Above 80,000 DWT
Thermal Coal	25,000	30,000	35,000



Other Coal	25,000	30,000	35,000
Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite)	8,000	-	-

Weightage in case of a shortfall in meeting the prescribed performance standard - 70%

B. Turnaround Time for receipt/delivery operation:

The Turnaround Time for receipt/delivery operation shall be the sum of time taken for loading/ unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks/ trailers/ rakes.

- | | | | |
|----|------|--------------------------|------------|
| a) | (i) | Truck (Single operation) | 10 minutes |
| | (ii) | Truck (Double operation) | 20 minutes |
| b) | (i) | Rake (single operation) | 4hrs |
| | (ii) | Rake (double operation) | 8 hrs |

Weightage in case of a shortfall in meeting the prescribed performance standard - 10%

Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent) in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above. The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Gross Berth Output by x%, Turn round time for receipt/delivery operations of Trucks by y% and Turn round time for receipt/delivery operations of Rake by z% and the weightage assigned to such shortfalls is 0.7, 0.15 and 0.15 respectively, then the overall shortfall in average performance will be $(0.7 x + 0.15 y + 0.15 z) \%$.



APPENDIX 16

ESCROW AGREEMENT

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

AMONGST

1. [● LIMITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [●] (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES for NEW MANGALORE PORT, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Panambur, Mangalore, Karnataka - 575 010., hereinafter referred to as "the Concessioning Authority" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

- (A) The Concessioning Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the "Concession Agreement") for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION



1.1 Definitions

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

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

"Budget" means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

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

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

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

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



Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the Concessions 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 Concessions Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.



2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) Days from the date of this Agreement, and in any case prior to the Date of Award of Concession, the Concessionaire shall open and establish the Escrow Account with the [(name of Branch)] Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Lenders/Lenders Representative and thereafter by the Concessions Authority.
- 2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Selectee, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a Party hereto and the



Selectee shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Selectee.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

1. all monies received in relation to the Project from any source, including the Lenders;
2. all funds received by the Concessionaire from its share-holders, in any manner or form;
3. all Fee levied and collected by the Concessionaire;
4. any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
5. all proceeds received pursuant to any insurance claims.

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

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

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

- a) all taxes due and payable by the Concessionaire;
- b) towards License Fee for Land and Water Area;



- c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- e) towards its debt service obligations under the Financing Documents;
- f) towards Royalty and other sums payable to the Concessions Authority and liquidated damages, if any;
- g) towards any reserve requirements in accordance with the Financing Documents;

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

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

4.2 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 of the Concession Agreement shall be appropriated in the following order of priority:

- i. towards taxes and statutory dues payable by the Concessionaire;
- ii. compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- iii. all amounts due to the Concessions Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;



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

4.3 Application of insurance proceeds

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

4.4 Withdrawals during Suspension

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

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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



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

5.4 No set off

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

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

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



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

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

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

8 SUPPLEMENTARY ESCROW AGREEMENT



8.1 Supplementary escrow agreement

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

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Concessions Authority, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Concessions Authority will indemnify, defend and hold the, Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessions Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessions Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.



9.2 Notice and contest of claims

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

10 MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

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

10.2 Waiver of sovereign immunity

The Concessions 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 Concessions Authority with respect to its assets
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets,



property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

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

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

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

10.6 No third party beneficiaries

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

10.7 Survival

10.7.1 Termination of this Agreement:



(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

10.8 Severability

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

10.9 Successors and assigns

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

10.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessions Authority:

CHAIRMAN,
New Mangalore Port Trust,
Panambur,



Mangalore-575 010
Fax No: 0824 2408390
Email: chairman@nmpt.in

The Concessionaire:

DIRECTOR
Chettinad Mangalore Coal Terminal Pvt Ltd
603, Anna Salai, Chennai – 600 006
Fax No. +91-44-42988669
Email: suresh-cibt1@chettinad.com
The Lenders/Lenders representative:
_____ Ltd

Fax No. _____
Email: _____

The Escrow Bank:
_____ Ltd

Fax No. _____
Email: _____

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

10.11 Language

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

10.12 Authorised representatives

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



10.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative:

(Signature)
(Name)

(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)



MINISTRY OF SHIPPING
(Port Wing)
NOTIFICATION

New Delhi, 31st 12th October, 1993

G.S.R. 704(E)—exercise of the powers conferred by section 5 of the Indian Ports Act, 1908 (15 of 1908) and clause (a) of Section 2 of the Major Port Trusts Act, 1963 (38 of 1963), and in supersession of the notification of the Government of India in the then Ministry of Surface Transport GSR No. 736(E) published in the Gazette of India Extraordinary Part II Section 3 (i) dated 7.12.1993, except as respects things done or omitted to be done before such supersession, the Central Government hereby declares that the limits of the Port of New Mangalore shall be as follows:-

On the North:-

A line due East from a position in latitude $13^{\circ} 00' 42.6''$ North, longitude $74^{\circ} 34' 59.2''$ East to a position in latitude $12^{\circ} 00' 12.6''$ North, longitude $74^{\circ} 47' 16.1''$ East.

On the East:-

- (a) thence along a line 45.72 metres on the shore from the high water mark upto the Northern acquisition boundary pillar of the harbour estate in position, Latitude $12^{\circ} 36' 10''$ North, Longitude $74^{\circ} 48' 20.5''$ East.
- (b) thence along the western boundary of the railway Marshalling Yard to the Northern Flood Bank-cum-Road.
- (c) thence along the Southern edge of the Northern Flood Bank-cum-Road to where it meets the Western edge of the N.H. 17.
- (d) thence along the north Eastern and South Eastern Boundary of the Port land East of the national Highway 17 (starting from a point on the Northern side having a Latitude $12^{\circ} 57' 02''$ North, Longitude $74^{\circ} 48' 39''$ East on the National Highway passing through the following points:
Latitude $12^{\circ} 56' 52''$ North Longitude $74^{\circ} 48' 58''$ East.
Latitude $12^{\circ} 56' 56''$ North Longitude $74^{\circ} 49' 09''$ East.
Latitude $12^{\circ} 56' 45''$ North Longitude $74^{\circ} 49' 47''$ East.
Latitude $12^{\circ} 56' 27''$ North Longitude $74^{\circ} 49' 51''$ East.
Latitude $12^{\circ} 56' 10''$ North Longitude $74^{\circ} 49' 15''$ East.

And terminating on the National Highway on the Southern side having a latitude $12^{\circ} 56' 00''$ North, Longitude $74^{\circ} 49' 15''$ East.

- (e) thence along the Western edge of the N.H. 17 to the Northern edge of the river bank road.
- (f) thence along the Northern edge of the river bank road to the sluice.



(b) thence along a line due 45.72 metres on the shore from high water mark upto the position in latitude 12° 53' 37.69" North, Longitude 74° 48' 54.6" East.

On the South:

Thence along a line due west from a position in latitude 12° 53' 37.3" North Longitude 74° 48' 54.6" East to a position in Latitude 12° 53' 37.3" North longitude 74° 36' 36" East.

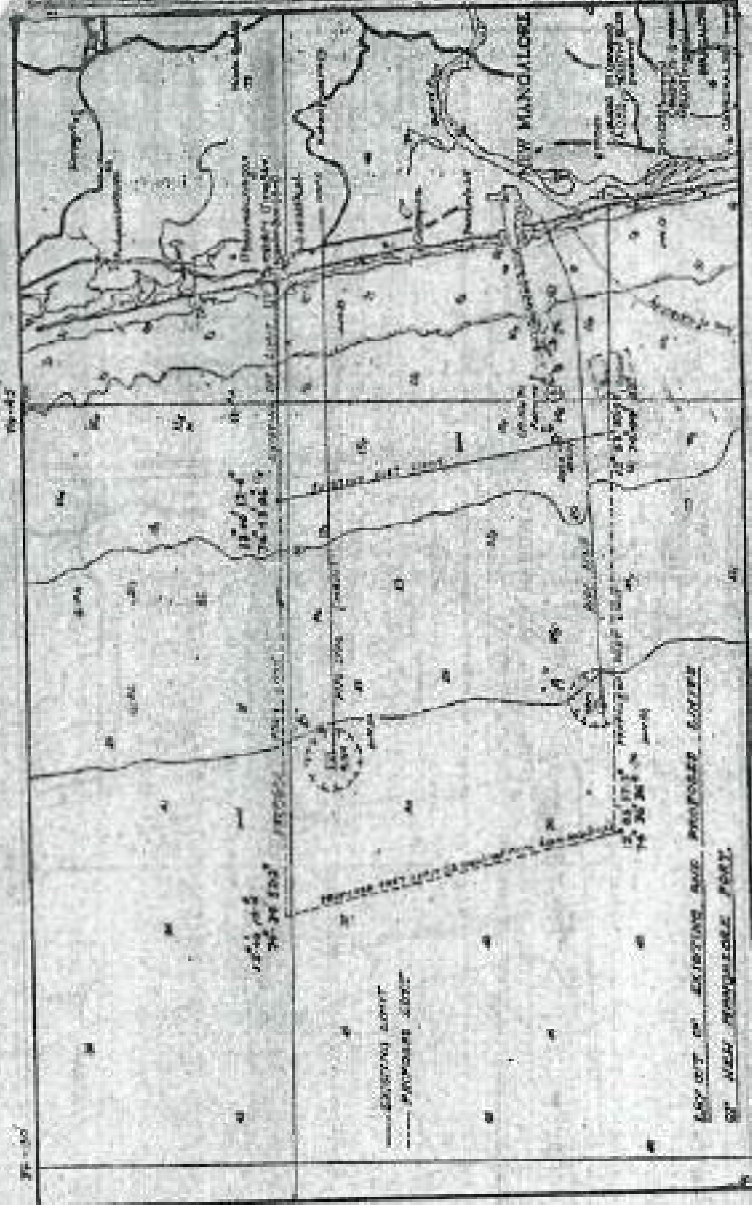
On the West:

Line joining a position in latitude 12° 53' 37.3" North, Longitude 74° 36' 36" East to position in latitude 13° 00' 12.6" North, longitude 74° 34' 57.2" East.

The above mentioned limits shall include all wharves and other works made on behalf of the public for convenience of traffic, or safety of vessels, or for the improvements, maintenance of good governance of the Port and its approaches, wharves within or without high-water mark and, subject to any rights of private property therein, any portion of the shore or bank within 45.72 metres of water mark.

(P. No. 10000/1/1000) P.O.
R. K. JAIN, J. Secy.





BY ACT OF EXISTING AND PROPOSED LAYOUT
OF NEW MANGALORE PORT.

COPIED FROM SURVEYOR GENERAL'S OFFICE AT NEW MANGALORE PORT - PROVISIONAL TO BE KEPT.

Printed in the Mangalore Press at Mangalore by the Government of India.

Handwritten initials/signature



APPENDIX 18
LETTER OF AWARD





ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ
नव मंगलूर पन्तन न्यास
NEW MANGALORE PORT TRUST

सेव पेपर सेव नेशन
SAFE PAPER SAVE NATION

ಪಂಚಾಯತ ಪಂಚಿ : ಪೋರ್ಟ್‌ಟ್ರಸ್ಟ್
Panambur Grama: PORTTRUST



ಮಂಗಳೂರು ದೂರವಾಣಿ : ೬೪೨೦ : 2407341
575010
ಮಂಗಳೂರು ಫೋನ್ : ಕಾರ್ಯಾಲಯ : 2407341
575010
Mangalore Phone : Office - 2407341 (16 Line)
ಫೋನ್ / ಫ್ಯಾಕ್ಸ್ / Fax : 0824-2408390

ಸಂಖ್ಯೆ
ಸಂಖ್ಯೆ 29/3/CA/B.12/CE(C)/2015-16/TS
No. _____

ಇವರಿಗೆ
ದಿನಾಂಕ 09/02/2016
Date _____

To,

Shri. S. P Palaniappan
General Manager (Finance)
Chettinad Builders Private Limited,
Lead Member of Consortium,
(comprising M/s South India Corporation Private Limited
& M/s Chettinad international Coal Terminal Private Limited)
5th Floor, Rani Seethai Hall Building,
No. 603, Anna Salai, Chennai - 600 006

Sir,

Sub: Letter of Award (LOA) for Mechanization of Berth No. 12 for
providing equipments for handling Bulk Cargo at NMP - Reg.
Ref: (i) RFP Letter No. 29/3/RFP/B.12/CE(C)/2015-16/TS, dated
13.10.2016.

(ii) Your offer dated 05.01.2016

- 1) We are pleased to inform you that the Board of Trustees of New Mangalore Port Trust has accepted your Financial Offer of payment of royalty of 31% (Thirty one Point Zero Percent) of the gross revenue of the project as share to New Mangalore Port Trust for the subject Project on the terms and conditions specified in the RFP and subsequent clarification and Addendum.
- 2) Please note that our acceptance of your Bid is subject to the following terms and conditions:-
 - a. In terms of Clause 2.2.6 of the RFQ, consortium comprising M/s. Chettinad Builders Private Limited, M/s South India Corporation Private Limited & M/s Chettinad international Coal Terminal Private Limited are required to set up a Special Purpose Vehicle (SPV) duly



Handwritten signature.

Received
Nidharan
(N. SURESA)



incorporated under the Companies Act 1956/2013 prior to the execution of the Concession Agreement. The constitution of such company should comply with the conditions of shareholding commitments mentioned in the RFP document.

- b. Execution of the Concession Agreement between New Mangalore Port Trust (NMPT) and the SPV within 30 days from the date of issue of this LoA.
 - c. Furnishing of the following documents by the SPV in terms of the RFP and Concession Agreement prior to signing of Concession Agreement.
 - i) A copy of the Certificate of Incorporation of the SPV.
 - ii) Details of promoters and their shareholding in the SPV, duly certified by the Company Secretary in original.
- 3) You are required to obtain prior approval of the security agencies in case there is any engagement of any other foreign nationals or foreign equipment at a later stage during the implementation of the Project. It is also informed that the security clearance of your consortium is subject to the condition that you do not involve any other foreign/national firm(s) as consortium without clearance of Government of India.
- 4) Kindly note, that this communication by itself does not create any right or contractual relationship with NMPT. Any such right or relationship shall come into effect only on your fulfilling the above said conditions and execution of the Concession Agreement by the SPV incorporated by the consortium comprising M/s. Chettinad Builders Private Limited, M/s South India Corporation Private Limited & M/s Chettinad international Coal Terminal Private Limited.
- 5) You are requested to return a duplicate copy of the LoA duly signed as token of acceptance of this Letter of Award within 7 days of receipt of LOA.

Thanking you

Yours faithfully,





(M. R. Hedaco)
Chief Engineer (Civil)



APPENDIX 19

LETTER OF ACCEPTANCE



Dated: 11.02.2016

To,

Chief Engineer (Civil)
Civil Engineering Department
New Mangalore Port Trust
Panambur,
Mangalore - 575 010

Handwritten notes and signatures:
② 16/2/16
10.12.16
12/2

Sub: Letter of Award for Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargo at NMP - Reg.

Ref: Your Letter of Award No. 29/3/CA/B.12/CE(C)/2015-16/TS dated 09.02.2016

Dear Sir,

We thankfully acknowledge the receipt of the Letter of Award (LOA) issued by you vide letter referred above for the captioned project.

As directed, we hereby enclose a duplicate copy of the LOA duly signed as token of acceptance of the Letter of Award.

Thanking you

Yours faithfully,



Authorised Signatory



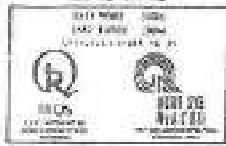
Chettinad Builders Private Limited
Rani Sathai Hall Building, 6th Floor
603, Anna Salai, Chennai - 6, TN, India
C.I.N. U15501MIL05NN4PTC05A119

T +91 (0) 44 4208 9153
F +91 (0) 44 4201 1166
E cbpl@chettinad.com
www.chettinadbuilders.com

TIN No. 133050461395 / 2004-05
CST RC No. 81607 dt.10.11.2014
Area Code : 0/2/4
Service Tax Reg. No AACCC473185Tee



ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ
ನವ ಮಂಗಳೂರು ಪನ್ನನ ನ್ಯಾಸ
NEW MANGALORE PORT TRUST



ಪಂಚಾಯತ ಕಛಿ : ಪೊರ್ಟ್‌ಟ್ರಸ್ಟ್
ಪಾನ್‌ಮೂರ್ ಲಾರ : ಪೊರ್ಟ್
Panambur Gram: PORTTRUST



ಮಂಗಳೂರು ದೂರವಾಣಿ : ಕಛಿ : 2407341
575010
ಮಂಗಳೂರು ಫೊನ್ : ಕಾರ್ಯಾಲಯ : 2407341
575010
Mangalore Phone : Office - 2407341 (18 Line)
ಫ್ಯಾಕ್ಸ್ / ಫಿಕ್ಸೆಕ್ಸ್ / Fax : 0824-2409990

ಸಂಖ್ಯೆ
ಸಂಖ್ಯೆ 29/3/CA/B.12/CE(C)/2015-16/TS
No.

ತಾರೀಖು
ದಿನಾಂಕ 09/02/2016
Date

To,

Shri. S. P Palaniappan
General Manager (Finance)
Chettinad Builders Private Limited,
Lead Member of Consortium,
(comprising M/s South India Corporation Private Limited
& M/s Chettinad international Coal Terminal Private Limited)
5th Floor, Rani Seethai Hall Building,
No. 603, Anna Salai, Chennai - 600 006

Sir,

Sub: Letter of Award (LOA) for Mechanization of Berth No. 12 for
providing equipments for handling Bulk Cargo at NMP - Reg.
Ref: (i) RPP Letter No. 29/3/RFP/B.12/CE(C)/2015-16/TS, dated
13.10.2016.
(ii) Your offer dated 05.01.2016

- 1) We are pleased to inform you that the Board of Trustees of New Mangalore Port Trust has accepted your Financial Offer of payment of royalty of 3.1% (Thirty one Point Zero Percent) of the gross revenue of the project as share to New Mangalore Port Trust for the subject Project on the terms and conditions specified in the RFP and subsequent clarification and Addendum.
- 2) Please note that our acceptance of your Bid is subject to the following terms and conditions:-
 - a. In terms of Clause 2.2.6 of the RFQ, consortium comprising M/s. Chettinad Builders Private Limited, M/s South India Corporation Private Limited & M/s Chettinad international Coal Terminal Private Limited are required to set up a Special Purpose Vehicle (SPV) duly



Handwritten signature



incorporated under the Companies Act 1956/2013 prior to the execution of the Concession Agreement. The constitution of such company should comply with the conditions of shareholding commitments mentioned in the RFP document.

- b. Execution of the Concession Agreement between New Mangalore Port Trust (NMPT) and the SPV within 30 days from the date of issue of this LoA.
- c. Furnishing of the following documents by the SPV in terms of the RFP and Concession Agreement prior to signing of Concession Agreement.
 - i) A copy of the Certificate of Incorporation of the SPV.
 - ii) Details of promoters and their shareholding in the SPV, duly certified by the Company Secretary in original.
- 3) You are required to obtain prior approval of the security agencies in case there is any engagement of any other foreign nationals or foreign equipment at a later stage during the implementation of the Project. It is also informed that the security clearance of your consortium is subject to the condition that you do not involve any other foreign/national firm(s) as consortium without clearance of Government of India.
- 4) Kindly note, that this communication by itself does not create any right or contractual relationship with NMPT. Any such right or relationship shall come into effect only on your fulfilling the above said conditions and execution of the Concession Agreement by the SPV incorporated by the consortium comprising M/s. Chettinad Builders Private Limited, M/s South India Corporation Private Limited & M/s Chettinad international Coal Terminal Private Limited.
- 5) You are requested to return a duplicate copy of the LoA duly signed as token of acceptance of this Letter of Award within 7 days of receipt of LOA.

Thanking you

Yours faithfully,


(M. R. Hedao)
Chief Engineer (Civil)



APPENDIX 20
FINANCIAL BID



APPENDIX-I
Letter comprising the Bid
(Refer Clauses 2.1.5 and 2.14)



 Dated: January 5, 2016

To,
The Chief Engineer (Civil)
New Mangalore Port Trust
Panambur, Mangalore - 575010

Dear Sir,

Sub: **Bid for "Mechanization of Berth No. 12 for providing equipments for handling Bulk Cargoes at NMP"- Reg**

With reference to your RFP document dated October 2015 we, having examined the Bidding Documents and understood their contents, hereby submit our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

1. We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
3. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
4. We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
 - a. We have examined and have no reservations to the Bidding Documents, including any Addendum Issued by the Authority; and



Chettnad Builders Private Limited
 Rani Saethai Hill Building, 6th Floor
 803, Anna Salai, Chennai - 6, TN, India
 C.I.N. U45201MH2006PTC261811

Tel: (+91) 44 4368 9133
 Fax: (+91) 44 4321 1666
 E: cbpl@chettinad.com
 www.chettinadbuilders.com

TIN No. : 33050461396 / 2004-05
 CST RC No. 316032 dt. 10.11.2004
 Area Code : 0/2/4
 Service Tax Reg. No. AACCC4133BET4001



- b. We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document; and
 - c. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - d. We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - e. the undertakings given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and we shall continue to abide by them.
7. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
 8. We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
 9. We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
 10. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 11. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 12. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/managers/ employees.
 13. We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government or any entity controlled by it, from participating in any project (BOT or otherwise), and that no bar subsists as on the date of submission of the Bid.
 14. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
 15. We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 3 (three) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. Further



Handwritten initials and date: *29/11*

Handwritten initials and date: *29/11*

Handwritten signature



we acknowledge that, the Lead Member shall have an equity share holding of not less than 26% (twenty six percent) of the paid up and subscribed equity of the SPV and not less than 50% (fifty percent) of the Consortium's holding in the paid up and subscribed equity of the SPV at all times. Applicant/ Members of the Consortium shall collectively hold not less than 51% (fifty one percent) of the subscribed and paid up equity of the SPV at all times until the third anniversary of the commercial operation date of the Project and not less than 26% (twenty six percent) of the subscribed and paid up equity of the SPV during the balance Concession Period. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

16. We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ. We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
17. We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.
18. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. In the event of our being declared as the Selected Bidder, we agree to enter into a Concession Agreement in accordance with the draft that has been provided to us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
20. We have studied all the Bidding Documents carefully and also surveyed the Project Site and the traffic. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
21. We offer a Bid Security of Rs. 4,70,00,000 (Rupees Four Crore Seventy Lakh Only) to the Authority in accordance with the RFP Document.
22. The Bid Security in the form of a Bank Guarantee is attached.
23. The documents accompanying the Bid comprising inter-alia Integrity Pact and related undertaking/ statement, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
24. We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, we shall have any claim or right of whatsoever nature if the Project/Concession is not awarded to us or our Bid is not opened or rejected.



[Handwritten signatures and initials]



25. The Royalty has been quoted by us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
26. We agree and undertake to abide by all the terms and conditions of the RFP document.
27. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.
28. We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
29. We hereby submit our Bid and offer a Royalty in the form of 31.0 per cent *Shan*
Thirty one percent only. of the gross Revenues of the Project as share of the Authority for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

In witness thereof, we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,



S P Palaniappan
General Manager (Finance)



Date: 05-01-2016

Place: Chennai

Q 29/1/16

Q 29/1

Shan 29/1/16

NOI 2nd
NOI 1st 29/1/2016

NOI 2nd
NOI 1st



EE CIVIL

From: Suresh Sr. VP - Technical (suresh-cibt@chettinad.com)
Sent: Friday, March 04, 2016 2:44 PM
To: Dy CE
Cc: Satheesh Babu A; rajendran g; EE CIVIL; nmptprojectscell@gmail.com; CE
Subject: Re: Mechanization of Berth No.12 for providing Equipments for handling Bulk Cargoes at NMP - Tender
Attachments: image002.jpg; CHETTINAD INTERNATIONAL BULK TERMINAL.jpg; Chettinad Mangalore Coal Terminal.pdf

To
The Chief Engineer,
New Mangalore Port Trust
Mangalore
Dear Sir,

EECI
/s/
4/2/16

We refer to your email below.

We are happy to inform that the SPV company to carry out the above project has been incorporated on the 26th February, 2016 and a copy of the same is enclosed for your reference.

The share holding in the SPV company has been done as per the RFQ document submitted for the tender earlier. As we need to modify the shareholding of the SPV company to ensure that the lead member of the consortium has a minimum of 50% stake in the SPV company we would require some additional time to follow the procedure as per ROC requirements.

Hence it is kindly requested that the date for signing of the Concession Agreement be extended by two weeks to enable us comply with the MCA guidelines.

Thanking you

Yours faithfully,
N.Suresh
Sr.Vice President (Technical)
Chettinad International Bulk Terminal Pvt Ltd.
Contact No.044 42988664,09841016000



From: "Dy CE" <dyce@nmpt.in>
To: "Suresh Sr. VP - Technical" <suresh-cibt@chettinad.com>
Cc: "Satheesh Babu A" <satheeshbabu-cibt@chettinad.com>, "rajendran g" <rajendran.g@chettinadpower.com>, "EE CIVIL" <eecivil@nmpt.in>, nmptprojectscell@gmail.com, "CE" <ce@nmpt.in>
Sent: Thursday, March 3, 2016 6:15:47 PM
Subject: RE: Mechanization of Berth No.12 for providing Equipments for handling Bulk Cargoes at NMP - Tender

Dear Sir,



Please find the attached revised draft Concession Agreement for review and concurrence. Further it is to inform that, as per model CA clause 11.2 (b) issued by Ministry of Shipping, Govt. of India, *The Lead member legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium's holding in the paid up equity capital of the Concessionaire.* Hence you are requested to modify the share holding pattern and forward the corrected document.

From: Suresh Sr. VP - Technical [mailto:suresh-cbtug@chettinad.com]

Sent: Thursday, March 03, 2016 3:40 PM

To: CE; Dy CE; EE CIVIL

Cc: Sobheesh Babu A; rajendran g

Subject: Mechanization of Berth No.12 for providing Equipments for handling Bulk Cargoes at NMP - Tender

To
The Chief Engineer,
New Mangalore Port Trust
Mangalore

Dear Sir,

We are enclosing the corrected Draft Concession Agreement with informations filled in from our end. Kindly fill in information like tariff notification no. and any other information required and send us the same such that we could prepare the document for signing.

With warm regards

N.Suresh

Sr.Vice President (Technical)

Chettinad International Bulk Terminal Pvt Ltd.

Contact No.044 42988664 ,09841016000





ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ
नव मंगलूर पन्तन न्यास
NEW MANGALORE PORT TRUST

सेव पेपर सेव नेशन
SAVE PAPER SAVE NATION

ಪರಾಂಬುರು ಕಛೇರಿ : ಪರಾಂಬುರು
पणभूर कार : पोर्ट ट्रस्ट
Parambur Grane: PORTTRUST



ಮಂಗಳೂರು ಕಛೇರಿ : ಕಛೇರಿ : 2407341
575010
मंगलूर कार्यालय : कार्यालय : 2407341
575010
Mangalore Phone : Office - 2407341 (18 Lines)
ಶೇಕ್ / ಕೆಎಸ್ / ಫೇಕ್ : 0824-2408990

ಸಂಖ್ಯೆ
ಸಂಖ್ಯೆ
No. 29/3/CA/B-12/CE(C)/2015-16/TS

ತಾರೀಖು
दिनांक
Date 05.03.2016

To,
Shri. S. P Palaniappan
General Manager (Finance)
Chettinad Builders Private Limited,
5th Floor, Rani Seethai Hall Building,
No. 603, Anna Salai, Chennai - 600 006.

Kind Attn.: Shri. N. Suresh, Sr. Vice President (Technical)

Sir,
Sub: Mechanization of Berth No. 12 for providing equipments for handling
Bulk Cargo at NMP - Reg.
Ref: Your email dated 04.03.2016.

With reference to above, as desired the signing of Concession Agreement has
been extended for another 15 days i.e., upto 22.03.2016, but the condition
precedent shall commence from 08.03.2016. Kindly note, no further extension will
be considered beyond the above said date.

Hence you are requested to be present for signing of Concession Agreement
on or before the above said date along with the following revised documents as per
the model concession agreement;

- Copy of the certificate of incorporation of the SPV.
- Details of the promoters and their share holdings in the SPV, duly
certified by the Company Secretary in original.

Thanking you,

Yours faithfully,


(M. R. Hedao)
Chief Engineer (Civil)

