



New Mangalore Port Trust

Panambur, Mangalore - 575010

CONCESSION AGREEMENT

FOR

**Mechanization of Berth No. 14 for Handling
CONTAINERS AND OTHER CARGO ON DBFOT BASIS
AT NEW MANGALORE PORT TRUST**

BETWEEN

Board of Trustees for New Mangalore Port Trust

Panambur, Mangalore - 575010

AND

**M/s JSW Mangalore Container Terminal Private
Limited**

1st Floor, Port Users Complex, Mormugao, South Goa, Goa, India-403803

January, 2020

CONCESSION AGREEMENT

between

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

and

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED
(The Concessionaire)

for

**"Mechanization of Berth No. 14 for Handling
Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust"**

January, 2020



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Government of Karnataka

Rs. 100

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 Account Reference : NONACC (FI)/ kacrsf108/ SURATHKAL/ KA-DK
 Unique Doc. Reference : SUBIN-KAKACRSFL0890518070808894S
 Purchased by : JSW MANGALORE CONTAINER TERMINAL PRIVATE LTD
 Description of Document : Article 12 Bond
 Description : CONCESSION AGREEMENT
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : BOARD OF TRUSTEES OF NEW MANGALORE PORT TRUST
 Second Party : JSW MANGALORE CONTAINER TERMINAL PRIVATE LTD
 Stamp Duty Paid By : JSW MANGALORE CONTAINER TERMINAL PRIVATE LTD
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at MANGALORE on this the 27TH day of JANUARY, 2020.



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Statutory Alert:

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BETWEEN:

BOARD OF TRUSTEES for New Mangalore Port, an 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

M/s. JSW Mangalore Container Terminal Private Limited, a company registered under the Companies Act, 1956/2013, and having its registered office at 1st Floor, Port Users Complex, Mormugao, Harbour Mormugao, South Goa, Goa, India-403803, 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. 14 for Handling Containers and other Cargo at New Mangalore Port Trust through private sector participation on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis.

(B) In June, 2018 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 various parties including the Application dated 27.07.2018 submitted by the Applicant/ Consortium in accordance with the Request for Qualification;

(D) The Concessioneing Authority, after evaluating all the applications, shortlisted **(05) five** number of applicants including the Applicant/Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;

(E) In response to the Request for Proposal, the Concessioneing Authority received proposals from the shortlisted applicants including the one submitted by the Applicant/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 Applicant/Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated 26.08.2019;



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(G) The Applicant/ Consortium has/ have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956/2013 to implement the Project;

(H) Following the issue of the Letter of Intent for Award of Concession, the Concessioneing 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: -

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

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

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

"Agreement" means this agreement as of date hereof, including Appendices 1 through 21 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 brought into force and effect by the Government of India or the State Government including rules, regulations and notifications thereunder; and to only include orders or judgments etc. of any court of record (i.e. the Supreme Court or any of the High Court's), applicable to this Agreement.

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

"Applicant" means M/s. JSW Infrastructure Limited, having its registered office at



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JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400051.

“**Bid**” means the proposal and the entire set of documents submitted by the Applicant and/or the Consortium in response to the RFQ and the RFP.

“**Bid Security**” means the bank guarantee No. 003BG07191350001 dated 15.05.2019 for Rs. 3,31,24,000/- (Rupees Three Crore Thirty One Lakh Twenty Four Thousand Only) issued by M/s. YES Bank Ltd., furnished by the Applicant/Consortium along with its Bid.

“**Board**” means the Board of Trustees for 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, , and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, , 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 include Completion Certificate Phase I and Completion Certificate Phase II individually or collectively as the case may be.

“**Completion Certificate Phase I**” shall have the meaning assigned to it under Article 6.3 (a).

“**Completion Certificate Phase II**” shall have the meaning assigned to it under Article 6.3 (b).

“**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).



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

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

"Consortium" Not Applicable.

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

"Construction Phase-II" means the period of 12 (twelve) months after commencement of 18 months of achieving 1.80 lakhs TEU's or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier.

"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 Person¹ 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 Phase I" means the date on which the Concessionaire receives the Completion Certificate Phase I in accordance with the provisions of this Agreement/ MPT Act.

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

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

¹ If requested by the Concessionaire, to facilitate custom duty exemptions available to the contractor for certain projects, the names of the persons engaged as Contractors may be specified.



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"Debt Due" means the aggregate of the following sums representing the amounts advanced by the Senior Lenders towards Total Project Cost, expressed in Indian rupees as may be outstanding and payable to the Senior Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Senior 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 2 years 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 Concessioneing 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 Senior 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 interalia 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.

"Equity" means the paidup share capital of the Concessionaire representing the equity component of the Total 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.

"Equity IRR" means the internal rate of return on equity investment of the project based on projected/actual cash flows during the Concession Period.



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"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 Senior Lenders/Senior Lenders representative substantially in the format set out in Appendix 16 hereto.

"Estimated Project Cost" means the sum of Rs. 280.71 Crores (Rupees Two Hundred Eighty point Seventy One Crores 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 Senior Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Applicant/Consortium have become effective and the Concessionaire has access to such Financial Assistance.

"Financial Year" means any twelve month period commencing from 1stApril and ending on 31stMarch.

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

"Financing Plan" means the base case financial model adopted by Concessionaire with the approval of the Senior Lenders and approved by the Concessions Authority in accordance with Article 3.1(a)(vii), setting forth the capital and operating cost of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a detailed description of the assumptions and parameters used for making calculation and projections therein including inter alia the Estimated Project Cost, License Fee and Royalty payable to the Concessions Authority annual estimated revenue, equity contribution, cargo handling projections estimated by Concessionaire, discounted net present value of the cash flows, Equity IRR, debt equity ratio and debt service coverage ratio, as set out in Appendix 17.



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"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.

"Independent Engineer" means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Scope of Work, 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.

"Indian Ports Association" means the Apex body of Major Ports of India registered under Societies Registration Act.

"Insurance Cover" shall have the meaning ascribed to it in Article 12.1(c)(ii).

"License Fee" shall have the meaning assigned to it under Article 9.1 (a)

"Management Contract including O & M Contract²" means the contract between the Concessionaire and the Management Contractor/O&M Contractor in respect of obligations of the Management of the project in accordance with the Request for Proposal/operation and maintenance of the Project in accordance with the provisions of this Agreement.

"Management Contractor³" means **M/s. JSW Infrastructure Limited**.

"Management Control" means the possession, directly or indirectly of the power to

²This definition may be included only in cases where such a contract is envisaged.

³This definition and the usage will be retained depending on the bids i.e. where the consortium meets the technical criteria on the strength of its management contractor who is not a member of the consortium, in such instances the management contractor would need to be identifiable in the contract.



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 of any act or event on (a) the ability of either Party to perform any of its rights or perform/dischage any of their duties/obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party

"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.

"Operations Phase" means the period from the Date of Commercial Operation Phase I 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 Concessioneing Authority or the Concessionaire as the context may require or admit and **"Parties"** means both Concessioneing 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 Concessioneing 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,



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trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

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

“Port’s Assets” means the assets set out in Appendix 2, belonging to the Concessioning Authority.

“Port Limits” means the limits of New Mangalore Port as defined under Section 5 of the Indian Ports Act, 1908, as amended from time to time.

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

“Project Capacity” means the capacity of the Project Facilities and Services to handle 2,39,148 TEUs (3.58 MMTPA) & 0.64 MTPA other cargo on non exclusive basis other than negative list provided in Appendix 19 for Phase-I and 3,58,722 TEUs (5.38 MMTPA (including Phase-I) container and 0.64 MTPA for Other Cargo on non exclusive basis other than negative list provided in Appendix 19 for Phase-II.

“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 Scope of Work, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

“Project Schedule” means the Appendix 5 hereto.

“Project Site” means the area demarcated in Appendix I including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement. This shall also include additional land, utilities and services allowed by Port in terms of Article 7.1 (c)(iii), wherever applicable.

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

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



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

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

“Request for Proposal” or **“RFP”** means the Request for Proposal dated 20th February, 2019 issued by the Concessioneing Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

“Request for Qualification” or **“RFQ”** means the Request for Qualification dated June 2018, issued by the Concessioneing 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 Concessioneing Authority.

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

“Royalty” means the revenue share payable by the Concessionaire to the Concessioneing 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 and notified by TAMP or such other competent authority under the provisions of MPT Act, as applicable.

“Scheduled Project Completion Date Phase I” means the day following completion of 12 (twelve) months from the Date of Award of Concession.

“Scheduled Project Completion Date Phase II” means the day following completion of 12 (twelve) months after commencement of 18 months of achieving 1.80 lakhs TEU's or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier.

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

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

“Special Audit” shall have the meaning assigned to it under Article



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“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.

“Stressed Project” means the PPP Project reaching a situation in which either Party is unable to perform/dischage its obligations under this Agreement due to reasons beyond its control or due to certain unanticipated conditions.

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

“Supporting Project Infrastructure” means:

- a) maritime access channels;
- b) port entrance;
- c) protective works including breakwaters, shore protection;
- d) sea locks;
- e) access to port for inland transport (including roads, bridges and tunnels);
- f) rail connections between hinterland and port;
- g) inland waterways within port area;

and shall include such other facilities as may be specified by Concessioneing Authority as supporting infrastructure provided/to be provided for the Project.

“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/69/2018 - NMPT dated 18.01.2019 approved by TAMP, setting out inter alia the Tariff and shall include any amendments, revisions or replacements thereof carried out or new guidelines in accordance with the Applicable Tariff Guidelines.

“Ten Year GSec” means the 10 Year GSec rate published by Reserve Bank of India prevailing as on the first day of April of each year of which the computation of interest is required to be made under the Agreement.

“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.



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"The Port" means New Mangalore Port.

"Total Project Cost" means the lowest of;

- a) The capital cost of the Project, as set forth in the financial Package.
- b) actual capital cost of the Project upon completion
- c) a sum of **Rs. 280.71 crores (Rupees Two Hundred Eighty point Seven One crores)**

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

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

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

1.2. Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard.

"CISF" means Central Industrial Security Force.

"DIN" means German Industrial Standard.

"FEM" means Federation of Equipment Manufacturers.

"GST" means **Goods and Services Tax**

"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.

"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



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“TEU” means Twenty Feet Equivalent Units.

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 Concessioneing 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;



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- (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



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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 and (b) 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 Facilities and Services as per Scope of Work.

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 as per Scope of Works 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 Concessions Authority hereby grants



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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.



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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) Undertaking to Furnish a copy of the Management Contract;
 - (vi) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
 - (vii) Submission to Concessioning Authority of its Financing Plan and Financing Documents for the Project and demonstrating Financial Close for verification that there is no inconsistency/contradiction with the terms & condition of the agreement. Authority, within 15 days shall notify concessionaire of inconsistency/contradictions, if any which shall be promptly addressed by the Concessionaire;
 - (viii) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:
 - (a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - (b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
 - (c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has



requested the 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;

(ii) Handing over physical possession of the Project Site measuring about 1.513 hectares and/or the Port's Assets for the purposes of the Project after receipt of performance guarantee / security from the concessionaire with the provision that license fee along with GST etc. shall be paid by concessionaire from the date of handing over.

(iii) provision of or putting in place arrangements for the provision of supporting project infrastructure by the Concessioneing Authority.

3.2. The aforesaid Conditions Precedent shall be complied with within 180 (one hundred eighty) days of the date of the Agreement. For the purpose of compliance of Financial Close obligation, Concessionaire, shall not be considered as default if the condition pending for achieving financial close are only those which are required to be fulfilled by the Concessioneing Authority under Article 3.1(b).

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 Concessioneing 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 Concessioneing Authority), the Concessioneing 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 fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire.



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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 Concessioneing 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 Concessioneing 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(b) (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 Concessioneing Authority, the Concessioneing 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 Concessioneing Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioneing Authority encashable and enforceable at Mangalore substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioneing Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of Rs. 16,56,19,000/- (Rupees Sixteen Crore Fifty Six Lakh Nineteen Thousand Only). Till such time the Concessionaire provides to Concessioneing 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 Concessioneing 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. 16,56,19,000/- (Rupees Sixteen Crore Fifty Six Lakh Nineteen Thousand Only).) is available in immediate cash to the Concessioneing Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 126 (one twenty six) months from the Date of award of Concession. 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 Concessioneing 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 Concessioneing 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 out of the panel prepared for the purpose by the Indian Ports Association. 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 for Phase I. For Phase II, Independent Engineer shall be appointed for a period commencing from the Date of 6 (six) months prior to start of construction for Phase II to the date of expiry of 6 (six) months from the Date of Commercial Operations for Phase II. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7. Work of certification of Performance Parameters as stipulated in this Agreement shall be done by Indian Ports Association during the remaining concession period (During the Operations period).

(c) The costs and expenses of the Independent Engineer and Indian Port Association for their services 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.



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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 Scope of Work.

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 Concessions 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 the comments/observations of the Concessions Authority in respect thereof) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

(c) In the event that the Independent Engineer/ Concessions Authority has observed that the Designs and Drawings are not in conformity with the Scope of Work, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer/ Concessions Authority 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 Concessions Authority at its sole discretion may suitably extend the Construction Phase.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer/Concessions Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer/ Concessions Authority.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire and Independent Engineer shall be severely and jointly be 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.

6.3. Construction Phase

(a) 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 Phase I**") not later than 12 (twelve) months from the date of commencement of the Concession Period.

(b) The Concessionaire shall promptly commence and complete the works within 12 months, 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 and as set out in Appendix 4 ("**Completion Certificate Phase II**") within 18 months of achieving 1.80 lakhs TEU's per annum or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier.

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 Concessioneing 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 Concessioneing 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 Concessioneing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioneing Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioneing Authority will not be enforceable against the Concessioneing 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 Concessioneing 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 Concessioneing Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Agreement; and (ii) release or discharge the Concessioneaire 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 Concessioneaire 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 Concessioneaire 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 Concessioneaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

(i) give a written notice to the Concessioneing Authority for commencing the works, including installation of equipment, for Phase II, in accordance with the Project Schedule and as set out in Appendix 4.

6.5. Obligations of the Concessioneing Authority

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

(a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessioneaire and on a best efforts basis assist the Concessioneaire in obtaining all other Applicable Permits as may be required by the Concessioneaire;

(b) make available all records of sub-soil investigations carried out on its behalf in



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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) handover of physical possession of the Project Site (berth area) measuring 1.22 hectares as per Appendix 1 from the date of commencement of commercial operation by the Concessionaire.

(g) handover of physical possession of the Project Site (storage area) measuring 6.50 hectares, as specified in Annexure 2, from the date of commencement of commercial operation by the Concessionaire.

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



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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 Concessioneing 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 Concessioneing 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 Concessioneing 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. 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 Concessioneing Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioneing 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 Concessioneing Authority, the Concessioneing Authority may, in its



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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 Concessioneing 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 Concessioneing 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 Phase I or Scheduled Project Completion Date Phase II. 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority does not disagree with the cost assessment of the Concessionaire, the Concessioneing 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 Concessioneing 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



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Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioneing 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 Concessioneing 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 Concessioneing 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 after deducting prorate advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope;

(g) Notwithstanding anything to the contrary contained in this Article 6.8, the 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 Concessions 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 Phase I or the Scheduled Project Completion Date Phase II, as the case may be. 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.

6.10. Specific Provision relating to phase-wise construction

The Provisions of this Agreement including the Provisions on Preparation of Designs and Drawings, Review of the Designs and Drawings, Issue of Completion Certificate and Liquidated Damages, in so far as they relate to the Date of Commercial Operation Phase I shall apply *mutatis mutandis* to Date of Commercial Operation Phase II.



ARTICLE-7

OPERATIONS & MAINTENANCE

7.1. (a) Obligations of the Concessionaire

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

(i) Berth and Terminal Operations:

The Concessionaire shall:

- (a) promptly commence operations upon the Project Facilities and Services being declared by the 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 as per the Scope of Work;
- (d) be free to deploy higher capacity equipment/facility/technology etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or /or cost saving of project assets during the concession period ;
- (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) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned there from;
- (i) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;



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(j) 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

(k) 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 Scope of Work 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 Scope of Work, 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



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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 that 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 Concessioneing Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioneing 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 Concessioneing Authority may specify from time to time.

(x) Security Arrangements

The Concessionaire may make its 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 Concessioneing Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioneing 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.



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(xi) Employment of Personnel

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

Further, the Concessionaire shall comply with the requirements of employing the existing personnel/ labour as agreed to and set out in Appendix 11. All labour law compliances shall be that of the Concessionaire alone.

(xii) Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the 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.

In the event the concessionaire is not able/likely to utilize the project facilities for a continuous period of 48 hours, the authority shall be entitled to use the project facilities on the following terms and conditions without any relaxation in minimum guarantee cargo obligation of concessionaire;

1. NMPT is allowed to handle 'Other Cargo', other than negative list specified in Appendix 19 as per SOP of common user basis as per forecast of Vessels.
2. NMPT will shift the vessel on or prior to arrival of Concessionaire's vessel with at least 24 hrs. prior notice from the Concessionaire.
3. NMPT will not utilize equipment and man power of SPV for handling such vessels. However, in case of mutual consent, equipment and man power can be used on chargeable basis. The charges will be decided mutually.

(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



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Indemnitie(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) Maintenance of Complaint Portal

- (a) The concessionaire shall maintain a "Complaint Portal" on its website which shall be available to all users of the Project Facilities and Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Concessioning Authority website with an alert system for realtime access to the complaints.
- (b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Authority and maintain a proof of reply.
- (c) If concessionaire fails to address the grievance and the complaint makes a reference to Authority, it will issue directions which shall be complied by the concessionaire.

(b) Rights of Concessionaire

(i) Refinancing of Debts

The Concessionaire in accordance with the provisions of this Agreement and the provisions of the Draft Tripartite Agreement (Appendix-19) may issue bonds to refinance the debts raised and utilized by it from Senior Lenders for financing the project for which Concessioning Authority shall enter into Tripartite Agreement as per the Draft Tripartite Agreement annexed at Appendix-19

(ii) Preferential and Priority Berthing

Normally, except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, the Concessionaire shall manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or



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discriminatory practice against any user or potential user thereof. However, if there is a requirement to 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, it shall be done in accordance with the priority berthing norms agreed between Concessionaire and Authority.

(iii) 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 Concessioning Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

(c) Obligations of the Concessioning Authority

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

(i) Marine and Port Services

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

(a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions.

(b) maintenance of the present draft available at the common user approach channel and lagoon of the port at 14 m, except during monsoon months where normal siltation in the approach channel and lagoon is expected and during maintenance dredging period;

(c) waterside safety and safety of navigation;

(d) maintenance of the dredged **depth** alongside the berth at **15.1m, which corresponds to a draft of 14.0m (Approximate)** except during monsoon months **(including dredging period)** when siltation is expected. The maintenance dredging will be carried out as per the pre scheduled programme of the Port.



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(e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

(f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

(g) provide for/put in place arrangements for provision of Supporting Project Infrastructure other than those covered under the Concession;

(h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and

(i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.

(ii) Approvals

The 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.

(iii) Additional Land, Utilities and facilities.

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the scope of work at any time during the concession period, the Concessionaire may approach the Concessions Authority for providing additional land, utilities and facilities. Concessions Authority on being approached by Concessionaire shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per scope of work. Even if authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient by concessionaire for providing services as per Scope of Work.

(iv) Reference to Adjudicatory Board

In the event of Project becoming a Stressed project, Concessions Authority may make a reference to Adjudicatory Board, after its constitution as per Article 19.4 of this Agreement, for appraisal and review of the Project to suggest measures to revive the Project.






7.1(d) Rights of Authority

(i) If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement for handling of cargo at the berth, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures for the handling of cargo.

(ii) In the event that the Concessionaire, upon notice as per 7.1(d)(i) above fails to handle cargo at the berth as per Agreement within a reasonable period, the Authority may takeover the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for handling of cargo at the berth; provided that such taking over by the Authority shall be of no greater scope and of no longer duration than is *reasonably required*.

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 Concessionaire shall make its own arrangements for Electricity from Mangalore Electricity Supply Company. The nearest take off point for electricity is available from substation at Bykampady; the ROW permission will be given by the Authority as per SoR.

(b) the Concessionaire shall make its own arrangements for water from Mangalore City Corporation from the nearest available water line; the ROW permission will be given by the Authority as per SoR.

(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



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Permits, if any, therefor.

7.3. Liability for shortfall in performance

In the event the Concessioneing 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 Concessioneing 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 Concessioneing Authority which shall be considered by the Concessioneing Authority on merits and the Concessioneing 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 Concessioneing Authority upon a Concessionaire Event of Default as set out in Article 15 including the Concessioneing Authority's right to terminate this Agreement which shall remain unaffected.



ARTICLE-8

TARIFF

8.1. Applicable Tariff Guidelines

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 is notified 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 till the Official Gazette by competent authority under applicable law.

8.2. Levy and Recovery of the Tariff

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 the Applicable Tariff Guidelines and duly notified 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. As of the date hereof, the applicable Tariff guidelines are as set out in Appendix 12. The Concessionaire shall, subject to Article 8.3 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

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. License Fee

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

$$\text{License Fee} = A \times B$$

where,

A = the extent of land area handed over pursuant to this Agreement, in square metres, as mentioned in Appendix 2.

B = License Fee per square metre per year, derived with 2% annual increment (compounded) corresponding to the Base Licence Fee of **Rs.24.83** per square metre per month as on the base date of 20th February 2017. For avoidance of doubt, B shall be equal to **Rs.25.833** per square metre per month for unpaved area and **Rs.47.829** per square metre per month for paved area for the period between 20th February 2019 to 19th February 2020.

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 is to be made 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 @ **10 years GSec plus 6% (Six Percent)** per annum on the amount outstanding.

9.2. Payments of Royalty

(a) The Concessionaire shall pay to the Concessioning Authority **Royalty of Rs.951/- (Rupees Nine Hundred and Fifty One only) per TEU of Container handled** on monthly basis.

The rate of royalty for other cargo shall be calculated based on the proportionate royalty quoted for Container Cargo against the average SoR for Container Cargo as per the following Formulae:-

$$R = (QRC / A) \times S; \quad \text{Where}$$



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- R = Royalty for other Cargo
 QRC = Rate quoted per TEU for Container
 S = **Average** Upfront SoR Rate for Other Cargo
 A = Average upfront SoR for Container Cargo i.e., Rs.2,250.37, being simple average of upfront SoR for **Laden, Empty** Containers for both Foreign and Coastal Cargo $(3125.51 + 2500.42 + 1875.31 + 1500.24) / 4$

- (h) Royalty per MT of cargo/ TEUs will be indexed **as per the indexation factor notified by TAMP on the quoted rate.**
- (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 @ 10 year GSec plus 6% (Six percent) per annum from the due date till the date of payment or realization thereof.
- (f) The above payment should be made along with applicable GST and all other taxes on Royalty.

9.3. Additional Utilities or Services

The Concessionaire shall also pay rent or other charges for any additional land (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioneing Authority to the Concessionaire in accordance with Article 7.1 (iii) the terms, conditions and covenants including on payment of rates specified by the Concessioneing Authority. Such rates shall be equal to 1.20 times the Scale of Rates. The charges in case of additional land will be 1.20 times of scale of rates as applicable at the time of giving additional land where the fees is paid on half year/ yearly basis, it may also contain an escalation Clause as in bidding documents but periodic review of SOR, if any will not be applicable 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 Concessioneing Authority a financial statement including quantity (MT) of cargo/TEUs handled for every 6 (six) monthly period ending 30th September and 31st



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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 quantity (MT) of cargo/TEUs handled 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 quantity (MT) of cargo/TEUs handled ("**Special Audit**").

In the event that the quantity (MT) of cargo/TEUs handled 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 quantity (MT) of cargo/TEUs handled reported by the Additional Auditor. The Concessionaire shall also pay interest @ 10 year GSec plus 5% (Six percent) on the difference between the Royalty paid by the Concessionaire based on the quantity (MT) of cargo/TEUs handled reported by the Statutory Auditor and that payable by the Concessionaire based on the quantity (MT) of cargo/TEUs handled 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 quantity (MT) of cargo/TEUs handled reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the Concessions 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

(a) Senior Lender 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;



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(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 Concessioneing Authority and the Senior 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 Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

(iii) all amounts due to the Concessioneing 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 Senior Lenders and the Concessioneing Authority.

(c) The Provision of this Article 9.5 and the provisions of the Escrow Agreement shall remain in full force and effect until all the obligations of the Concessionaire set for in this Agreement have been fully discharged.



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 Senior 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 Concessioneing Authority to the Senior Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.



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ARTICLE-11

SHAREHOLDING

11.1. Ownership Structure

The Applicant has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Agreement. The shareholding pattern of Concessionaire is 100%.

11.2. Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the two (2) years after COD as also maintain their equity holding in the Concessionaire such that:

(a) Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% (fifty one percent) of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of Pre-qualifications in response to Request for Qualification shall hold less than 26% (Twenty Six Percent) of such equity until expiry of two (2) years after Date of Commercial Operations Phase I. At any time, after expiry of the aforesaid shareholding period, Selected Bidder can approach Authority for approval proposing a new entity/ consortium. Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and

(b) M/s [●] ("Lead Member") Not Applicable.

Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioning Authority which consent shall not be 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 Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessioning Authority as stated hereinbefore and in accordance with the Financing Documents.



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11.3. Constituent Documents

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

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the 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 Concessioneing 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 Concessioneing 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 Senior 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 @ 10 year GSec plus 6% (Six 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



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

(d) Indemnification

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

(e) Assignability

Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Concessing Authority.

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

(i) absolve the Concessionaire from its responsibilities to perform/dischage any of its obligations under and in accordance with the provisions of this Agreement; and

(ii) authorize or be deemed to authorize the Senior Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in



terms of the Substitution Agreement.

(f) Engagement of Contractors

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

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability of 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 if required security clearance for the Contractor the Concessionaire intends to engage;

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessions 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



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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 Concessions 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 Concessions 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 Concessions Authority a guarantee issued by a Nationalised bank/ scheduled bank in India having a branch at Mangalore for a sum of Rs. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen 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 Concessionaire Event of Default and the Concessions Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

12.2. Of the Concessions Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

The Concessions 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. In case of non-payment, Concessionaire may pay the amount after giving 30 days notice to Concessions Authority and seek reimbursement from the Concessions Authority in due course.

(c) Competing Facilities

The Concessions Authority shall not operationalise any additional facilities within port limits for handling Container Cargo (excluding Container Cargo in Ro-Ro ships)



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either on its own or through any other person until 9 (Nine) years from the date of commercial operation date (CoD) of Phase II ("**Exclusivity Period**")

(d) General rights of inspection and verification

The Concessioneing 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 Concessioneing Authority and the Concessionaire

(a) Monitoring Arrangement

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Appendix 18 "Monitoring Arrangement"

(b) Compliance with Laws and Regulations

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

(c) Rights to Documents

(i) Concessioneing Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioneing Authority to the Concessionaire, shall always remain the property of the Concessioneing 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 Concessioneing Authority, be returned by the Concessionaire to the Concessioneing 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 Concessioneing 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.



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(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 Concessions Authority of the Senior 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.
- (d) Any imposition of new Taxes except a new Direct Tax (both State and Central), duties, cess and the like and/or the increase in Taxes except in Direct Taxes (both State and Central), duties, cess and the like effected from time to time by any Government Authority, and/or imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or imposition of standards and terms of employment and working conditions of labourers and workmen; and/or any rules or regulations stipulated by TAMP or other regulatory authority having jurisdiction over the Project in respect of the standards of service. A change in the interpretation or application of any Indian Law by the judgement of a court of record which has become final and binding in place of such interpretation or application of law by a court of record prior to the bid due date.

13.2. The Concessionaire's Remedy

- (a) In the event of Change in Law the Concessionaire may propose to the Concessions 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 i.e. Protecting Project IRR as per financing plan.



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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. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen Thousand Only) may at the option of the Concessions Authority be borne by the Concessions Authority. It is clarified that Additional Cost upto Rs. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen 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 10 year GSec



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+ 6% (six 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. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen Thousand Only) in any Financial Year, the Concessionaire shall notify the Concessioneing Authority and pay to the Concessioneing 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 Concessioneing 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 Concessioneing 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 Scope of Work, 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



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any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(c) any event or circumstance of a nature analogous to any of the foregoing.

14.5. Notice of Force Majeure Event

(a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

(b) The Notice shall inter-alia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6. Period of Force Majeure

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

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7;



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(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 Phase I or the Date of Commercial Operations Phase II is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date Phase I or Scheduled Project Completion Date Phase II, as the case maybe;
- (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) Failure to enter into operation and maintenance (O&M) contract before date of Commercial Operation and 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



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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 Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- (xii) levy of an execution or distraint 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 distraint remaining in force for a period exceeding 90 (ninety) Days;
- (xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;
- (xiv) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- (xv) a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- (xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking other than transfer of assets in the ordinary course of business in contravention with the provisions of Article 11 hereof; and
- (xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

(b) The Concessions Authority Event of Default

- (i) the Concessions 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 Concessions Authority



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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 Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessioneire Event of Default).

(iv) levy of an execution or destraint on the Port's Assets in any proceedings against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessioneire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

15.2. Parties Rights

(a) Upon the occurrence of the Concessioneire Event of Default, the Concessioneing 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 Concessioneing Authority Event of Default, the Concessioneire 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 Senior 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 Senior 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 Concessioneire Event of Default, the Concessioneing Authority shall in consultation with the Senior 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



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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 Senior 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 Senior 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 Senior 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.



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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 Senior 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 having Material adverse effect shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Senior 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 Concessioneing 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 Concessioneing Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioneing Authority to estimate the likely compensation payable by the Concessioneing 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 Concessioneing Authority.

- (a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Senior 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;



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(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

(d) any other information or records to be specified by Concessioneing Authority at its discretion regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

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

(b) If, as a result of the condition survey, the Concessioneing 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 Concessioneing Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessioneing 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;



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(b) the Concessing Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessing 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 Concessing 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 Concessing 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 Total 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 Phase I, 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 Total Project Cost;

Provided, no compensation shall be payable to the Concessioneing Authority 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 Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Port's Assets and the Project Facilities and Services free of cost and Encumbrance.

17.3. Transfer Fee and Charges

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

- (a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;
- (b) the Concessions Authority in the event of termination due to an Concessions 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 Senior Lenders

The Concessionaire hereby irrevocably authorises the Concessions Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the 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 Senior Lenders on any of its assets taken over by the Concessions Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessions Authority in accordance with this Article 17.4 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.

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Senior 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 Concessions 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



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Documents and a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Concessions Authority, the compensation shall be paid by the Concessions Authority to the Concessionaire directly.

17.5. Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessions Authority fails to pay the compensation on the Transfer Date, the Concessions Authority shall be liable to pay interest@ 10 years GSecplus 6% (six 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 Concessions 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 Concessions Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessions Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessions Authority the Project 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 Concessions 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 Concessions Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessions Authority is delayed for reasons attributable to the Concessions Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessions 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessioneing Authority; and (iii) those the Concessioneing Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioneing Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessioneing 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 Concessioneing Authority;

(f) at its cost, transfer to the Concessioneing Authority all such Applicable Permits which the Concessioneing Authority may require and which can be legally transferred. Provided if the termination is on account of Concessioneing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioneing 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 Concessioneing Authority in terms of the provisions of this Agreement.

18.3. Concessioneing Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioneing Authority shall pay compensation payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Senior Lenders, or deposit the same in the Escrow Account or on the written instructions of the Senior 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 Concessioneing 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 Senior 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 Concessioneing Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessioneing Authority in respect of Concessioneing 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 Concessioneing Authority under this Agreement.



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ARTICLE-19

DISPUTE RESOLUTION

19.1. Amicable Settlement

If any dispute or difference or claims of any kind arises between the 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

19.3.1 Any Dispute which is not resolved amicably as provided in Clause 19.1 and 19.2, shall be finally settled by arbitration as set forth below:-

- i) The Dispute shall be referred to the Society for Affordable Redressal of Disputes-Ports (hereinafter called as SAROD-Ports). The dispute shall be dealt within terms of Rules of SAROD-Ports. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD-Ports and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.
- ii) The constitution of Arbitral Tribunal, code of conduct for Arbitrators and fees and expenses of SAROD-Ports and Arbitral Tribunal shall also be governed by the Rules of SAROD-Ports as amended from time to time. The rules of SAROD-Ports are placed at Appendix-20.
- iii) The seat of Arbitration shall be New Delhi or a place selected by the Governing Body of SAROD-Ports and the language for all documents and communications between the parties shall be English.
- iv) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.



19.3.2 Any Award made in any arbitration held pursuant to the Article 19 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

19.3.4 In the event that the Party against whom the Award has been granted, challenges the Award for any reason in a Court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim payment for an amount equal to 75% (seventy five percent) of the Award, pending final settlement of the dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to

120% (one hundred and twenty percent) of the aforesaid amount. The Bank Guarantee shall be kept alive for the entire period till the dispute is finally resolved. Upon final settlement of the dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at 10 year GSec + 6% per annum from the date of interim payment to the date of final settlement of such balance. The Parties acknowledge and agree that the

Arbitration proceedings shall be video recorded and one copy each of the video recording shall be provided to both the parties.

19.4. Adjudication by Adjudicatory Board

In the event of constitution of a statutory Adjudicatory Board or such other forum with powers to receive and adjudicate upon disputes between the Concessionaire and the Concessions Authority, all disputes not settled under Clause 19.2 through conciliation, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the parties in accordance with the applicable laws. For avoidance of doubt, parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the parties cannot refer the dispute, difference or controversy of whatsoever nature again under Clause 19.3 and the adjudication hereunder shall be final and binding.



ARTICLE-20

REPRESENTATIONS AND WARRANTIES

20.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessions 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



[Handwritten Signature]



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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority

The Concessioneing 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 Concessioneing 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 Concessions 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
(Ministry of Shipping, Government of India)
Mangalore, Karnataka - 575010
Fax No: +91-824-2408390
Email: chairman@nmpt.gov.in / chairman@nmpt.in

The Concessionaire:

JSW Mangalore Container Terminal Private Limited,
1st Floor, Port Users Complex,
Mormugao, South Goa,
Goa, India-403803
Fax _____
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.

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.



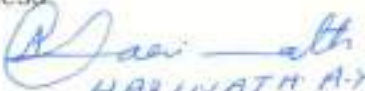
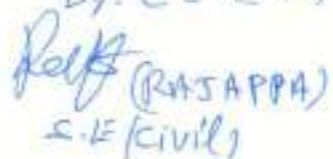
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the dates indicated next to their signatures below:

Signed and delivered for and on behalf of the Board of Trustees for New Mangalore Port, the Concessioning Authority. The Common Seal of the Concessioning Authority is affixed pursuant to the resolution No. 129/2019-20 dated 17.01.2020 of the Board.


Paritosh Bala




Witness

1. 
HARINATH A.Y.
DY. CE (CIVIL)
2. 
(RASAPPA)
S.E (CIVIL)

Signed and Delivered for an on behalf of M/s. JSW Mangalore Container Terminal Pvt. Ltd., the Concessionaire by the hand of its authorized representative Mr. Devki Nandan, Senior Vice President, Business Development and M&A pursuant to Resolution dated 26.09.2019 of its Board of Directors.




(Devki Nandan)

Witness

1. 
Capt. Ran
2. 
DILIP PURTY

APPENDIX-1

PROJECT SITE

1. The Port of New Mangalore, one of the modern Port of India commissioned in 1975 and one among the major ports in India.
2. It is situated in Karnataka state, and lies between the major ports of Cochin and Mormgao port.
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 Mormgao port. The layout of the Port is as Drawing No.1 to Appendix 1.
4. The Port 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.

Tidal particulars obtained there from are as follows:

Highest High Water Level (HHWL)	+1.68m
Mean Higher High Water (MHHW)	+1.48m
Mean Lower High Water (MLHW)	+1.26m
Mean Sea Level (MSL)	+0.95m
Mean Higher Low Water (MHLW)	+0.77m
Mean Lower Low Water (MLLW)	+0.26m
Lowest Low Water Level (LLWL)	+0.03m.

5. The proposed Berth No. 14 is as deep draft and multipurpose berth having length of 350 meters, width of 35 meters, draft of 14 meters and depth of 15.1 meters. Hence, the Total Area of the berth is approx. 1.2 Ha.

6. The proposed project site for "Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" is located within the harbour basin between old dock arm and western dock arm. The storage area is located at two places, new yard behind the berth and existing yard near spending beach. The Layout Plan of the Port is marked as Drawing No. 1 and the drawing indicating the area availability is marked as Drawing No. 2 and 3 to Appendix 1.

7. The project is envisaged to be implemented in two Phases as follows. The phases have been planned to optimize deployment of equipment/facilities matching with the container traffic projections:

(a) Phase I: Terminal Capacity : 2,39,148 TEU / annum+ 0.64 MTPA other cargo on non exclusive basis.



S. S. S.



(b) Phase II: Terminal Capacity : 3,58,722 TEU / annum + 0.64 MTPA other cargo on non-exclusive basis (including Phase I)

8. The Available Land for Storage and Operation:

Location	Area (In Sqm)	Description	Phases
Berth Area (350mx35m)	12,250	1.225 Ha Berth area	Phase I
Area behind the Berth (350mx42m)	15,133	1.513 Ha only for truck queuing and connectivity.	Phase I
Existing stackyard near spending beach	65,000	6.50 Ha for Container Storage	Phase I
Proposed stackyard behind the berth	75,000	7.50 Ha for Container Storage	Phase II
Total Phase I area	9.24 Ha		
Total Phase II Area	7.50 Ha		
Total area	16.74 Ha		
Railway Stackyard area on common user basis	1.30 Ha		

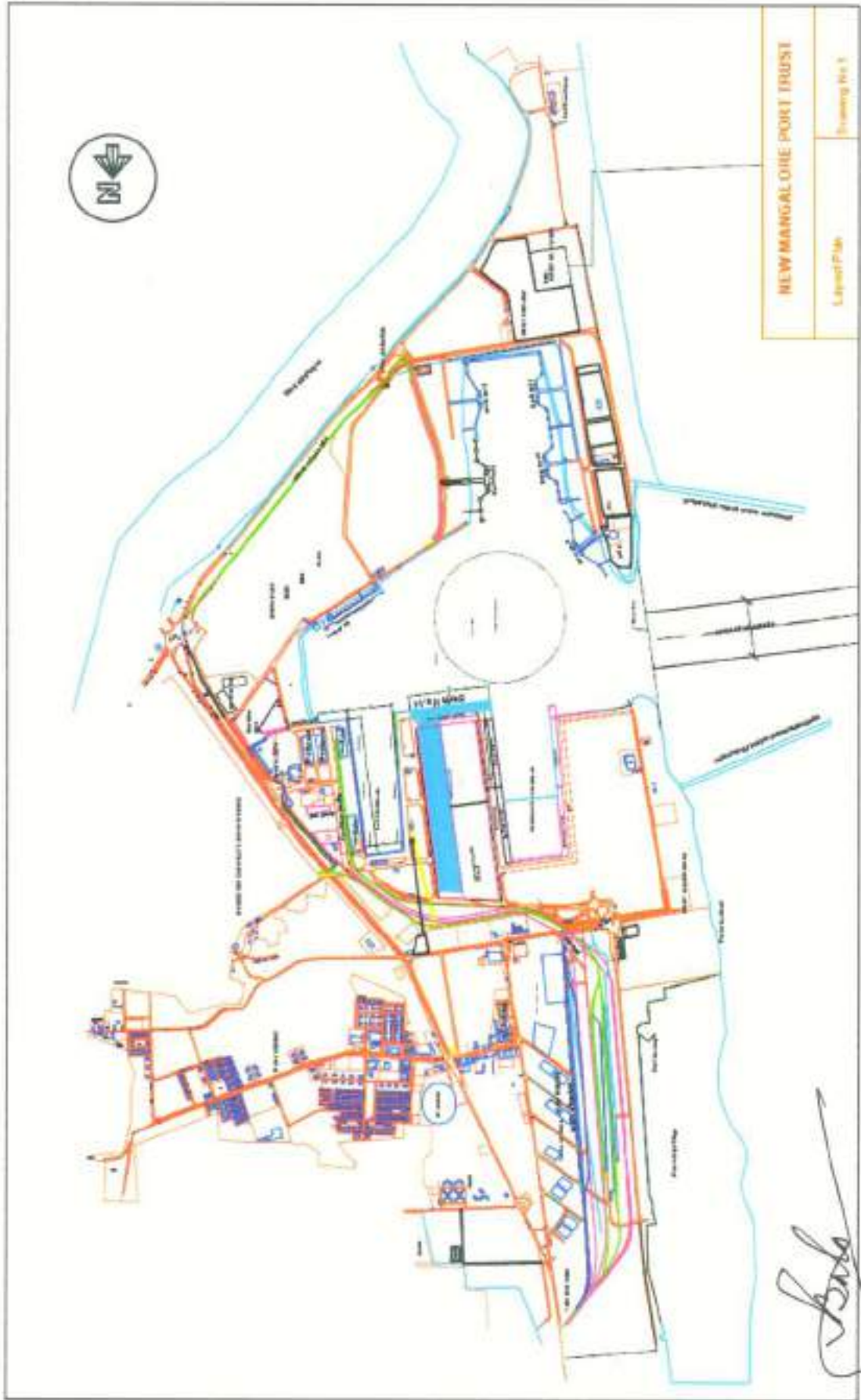
9. The connectivity of road to the Container yard is directly from the Port internal roads can be used for enter and exit of container terminal. Containers can be permitted to enter or exit in the two gates of the Port or one gate for entry other for exit as per the Port convenient. The Port internal roads are shown in the Layout Plan of the Port (Drawing No. 1).

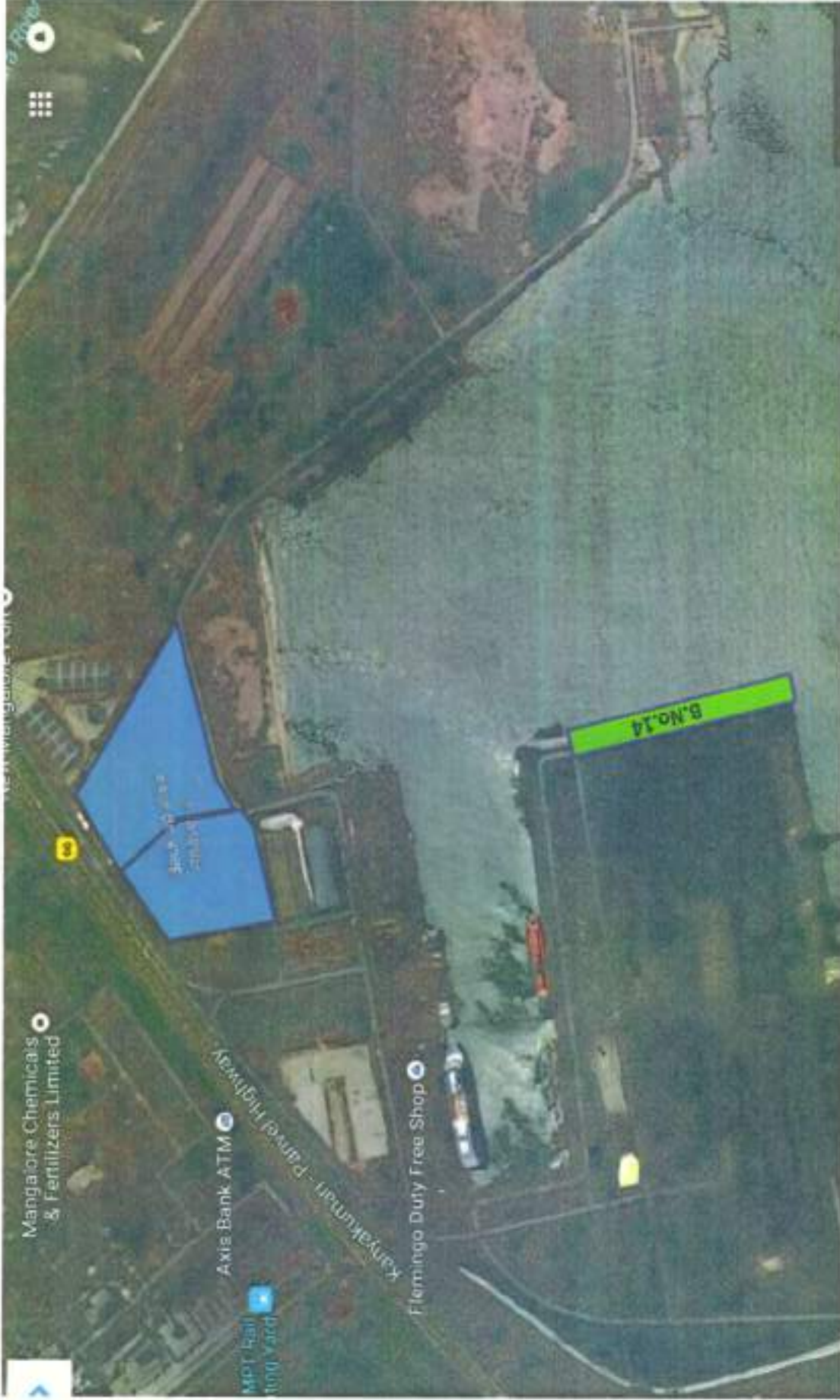
10. The outlet of drains within proposed area shall be connected to the existing cross drains in the yard. The drain outlets from the proposed storage yard shall be connected to the existing drains adjacent of the Concessioning Authorities.

11. The existing railway yard behind the proposed stackyard shall be used for handling containers on common user basis.

Enclosures: Drawing No. 1, 2 & 3







Drawing No. 2





Drawing No. 3



APPENDIX-2

PORT'S ASSETS

1. Deep Draft Berth. (Only Operational area to be used)

The existing multipurpose deep draft Berth No. 14 will be handed over to the Concessionaire, as mentioned at Clause No. 3.1 b(ii) of Article 3 and clause No. 6.5 (f), 6.5(g) of Article 6.

- (a) Length of the Berth: 350 meters
- (b) Designed Dredged depth: 15.1 meters
- (c) Design Ship size: 80,000 – 1,00,000 DWT
- (d) Width of R.C.C Deck: 35 meters

2. Available Land for Storage and Operation:

Location	Area (In Sqm)	Description	Phases
Berth Area (Paved Area) (350mx35m)	12,250	1.225 Ha Berth area	Phase I
Area behind the Berth (350mx42m) Paved Area = 4800 Sq.m. Unpaved Area = 10333 Sq.m.	15,133	1.513 Ha only for truck queuing and connectivity.	Phase I
Existing stackyard near spending beach (Paved Area)	65,000	6.50 Ha for Container Storage	Phase I
Proposed stackyard behind the berth (Unpaved Area)	75,000	7.50 Ha for Container Storage	Phase II
Total Phase I area	9.24 Ha		
Total Phase II Area	7.50 Ha		
Total area	16.74 Ha		
Railway Stackyard area on common user basis	1.30 Ha		

3. The connectivity of road to the Container yard is directly from the Port internal roads and the road on the western side parallel to the railway marshaling yard can be used for enter and exit of container terminal. Containers can be permitted to enter or exit in the two gates of the Port or one gate for entry other for exit as per the Port convenient. The Port internal roads are shown in the Layout Plan of the Port (Drawing No. 1).



4. The outlet of drains within proposed area shall be connected to the existing cross drains in the yard. The drain outlets from the proposed storage yard shall be connected to the existing drains adjacent of the Concessioning Authorities.

5. ENTRANCE CHANNEL

The New Mangalore Port (NMP) is a major sea-port situated on the west coast of India (latitude 12°55'N, longitude 74°48'E). The port, a lagoon type harbor is entered through a dredged channel, about 7.5 km long. The entrance is protected by two breakwaters extending to a length of 770m (from shoreline) on either side of the channel. The dredged channel has a bottom width of 245m, and a dredged depth of 15.4m below CD. The center line of the channel is 270° from the north. The harbor basin has a dredged depth of 15.1m below CD.

6. MARINE & LAND ENVIRONMENT

The port is located on an alluvial plain, about 10 km of the Gurupur and the Netravathi Rivers. The old port of Mangalore, located at the confluence of these two rivers is operational only during the fair weather season (15th September to 15th May).

7. TURNING CIRCLE DIAMETER

The diameter of the turning circle is 570 m and as per IS 4651, where vessels turn by free interplay of the propeller and ruddler assisted by tugs the main diameter of the turning circle shall be 1.7 to 2.0 times, (1.7 for protected location and 2 for exposed location). The length of the larger vessel has to be turned. As such 3rd generation container vessels of 270 m length can be easily handled at the turning circle.

8. NAVIGATIONAL AIDS

The existing port craft and navigational aids will be adequate to handle the additional vessels arriving at to container terminal Berth No.14. Hence no navigational aids are envisaged. Any additional navigational aids, if required, will be taken up by NMP.

9. WASTE DISPOSAL FROM SHIPS

Waste reception facilities to be permitted for ships arriving from the berth as per MARPOL convention. Solid waste cleared from the vessels and utility area to be cleared from the container terminal and from the wharf area on daily basis.



APPENDIX-3

SUBSTITUTION AGREEMENT

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

AMONGST,

THE NEW MANGALORE PORT TRUST, an 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 administrators, successors or assigns.

AND

M/s. XXXX Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its Registered Office at ----- hereinafter referred to as "**the Concessionaire**" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

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

OR

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

WHEREAS,

(a) The Concessioneing Authority for implementing a Project envisaging "Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" (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**") and has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;

(b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioneing Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Senior Lender/s/Senior Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:



[Handwritten Signature]



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 Senior 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.

"Senior 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 Senior 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 Senior Lender/Senior Lender's Representative pursuant to this Agreement and approved by the Concessioneing Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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



A handwritten signature in black ink, appearing to read "S. S. S.", written over a horizontal line.



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 Senior 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 Senior 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 Senior 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 Concessioneing Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Selectee selected by the Senior Lenders in accordance with this Agreement (For the avoidance of doubt, the Senior 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 Senior Lenders/ Senior Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Concessioneing 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 Senior Lenders/ Senior 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 Senior Lenders/Senior 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 Senior Lenders/Senior 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 Concessions Authority shall by a notice inform the Senior Lenders/ Senior Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days' time to the Senior Lenders/ Senior Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

3.3.2 In the event that the Senior Lenders/ Senior Lenders' Representative makes a representation to the Concessions 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 Senior Lenders/Senior 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 Concessions 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 Senior Lenders/ Senior Lenders' Representative and the Concessionaire, the Concessions 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 Concessions Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessions Authority under Clause 3.3.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders 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 Senior Lenders/Senior 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 Senior Lenders/ Senior 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) execute the Concession Agreement to the Selectee such that the Selectee



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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 Senior Lenders/ Senior Lenders' Representative, give a reasoned order after hearing the Senior Senior Lenders/ Senior 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 Senior 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 Senior Lenders/ Senior 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 Senior Lenders' Representative or the Senior 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 Senior Lenders/Senior 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 Concessions Authority or the Senior Lenders/ Senior Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Senior Lenders/Senior 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 Senior Lenders/ Senior Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing 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 Concessioneing Authority is selected and recommended by the Senior Lenders/ Senior 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 Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Senior 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 Senior 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 Senior Lenders/Senior 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 Senior Lenders/Senior 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 Senior Lenders/Senior 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 Senior Lenders/Senior 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 "Senior Lender" and the "Senior 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 Senior Lender, the Concessionaire or Concessions Authority, "Selectee" and the successor in interest of the Senior 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 r Senior Lenders/ Senior 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 there under.

(vii) The consultation, recommendation or approval of the Senior Lenders' Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Senior Lender and each such Senior 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.



A handwritten signature in black ink, appearing to be "K. S. S.", written over a horizontal line.



(ix) The Concessionaire agrees and acknowledges that it shall not be necessary for the Senior Lender(s) or the Senior 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 Senior 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 Senior Lender	Nature and Amount of Financing Assistance

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

SIGNED AND DELIVERED ON BEHALF OF
-----LIMITED, (the Concessionaire)

BY: _____

Name:
Title:

SIGNED AND DELIVERED ON BEHALF OF
NEW MANGALORE PORT TRUST, (the Concessioneing Authority)

BY: _____

Name:
Title:

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

Name:



APPENDIX 4

PROJECT REQUIREMENTS

Scope of Work

Project Facilities and Services:

The Concessionaire shall prepare the various developmental activities for successful commissioning of the Container Terminal at New Mangalore Port and get it approved by the Concessing Authority. All care shall be taken by the Concessionaire during the Construction Phase I to the safety of men and material. The electrical cables, water pipes shall not be damaged while developing the facilities. The damage so caused shall be rectified and made good by the Concessionaire at its cost. A security fence may be installed along the perimeter of the terminal after discussion with the Concessing Authority taking into consideration the safety and smooth flow of traffic.

(i) Berth

The existing multipurpose deep draft Berth No.14 will be handed over to the Concessionaire. The salient features of the Berth are as follows:

- (a) Length of the Berth: 350 meters
- (b) Designed Dredged depth: 15.1 meters
- (c) Design Ship size: 80,000 – 1,00,000 DWT
- (d) Width of R.C.C Deck: 35 meters

The Civil Works envisaged on the Project Site are given below:

Phase-1	Phase-2 (Additional Works)
Land preparation for desired level including cutting, filling, , removal of coal heaps, bushes and all other debris behind the berth of 1.5133 Ha	Soil investigation of stackyard and Detailed Engineering
Development of 1.5133 Ha for storage including, service roads, surface drainage, slot marking etc. -	Land preparation for desired level including cutting, filling, removal of building, trees, coal heaps, bushes and all other debris
	Development of container parking yard including, surface drainage, slot marking etc.
Electrical, Water supply, sewage and firefighting arrangements	Construction of buildings, electrical substation, control room, stores office, workshop, admin building, rest room,



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	and security etc.,
	Roads, fencing, boundary wall, entrance & exit gates
	Water supply & Sewage arrangements
	Miscellaneous works such as firefighting, ambulance, first aid post, green belt, & environment mitigation measures.

(ii) Container Yard

The Concessionaire may plan the container stacking height keeping in mind the prevailing conditions of the Licensed Premises as follows. The container stack yard will have all required facilities for efficient transshipment services, container control room office, data recording office, general site office, weigh-bridge, storage and maintenance shed for cranes and equipments E- Substation and truck parking space. One security office, boundary wall / fence with security entry gate will ensure safety of the cargo

Phase 1 : 6.50 Ha

Phase 2 : 7.50 Ha

(iii) Container and Other Cargo Handling Equipment

The equipments to be deployed by the Concessionaire as per the schedule of award of Concession is as under.

S. No.	Description	Quantity	
		Phase-1	Phase-2 (Additional Equipment)
1	Mobile Harbour Crane	2 Nos	1 nos
2	Reach Stackers	6 Nos.	2Nos.
3	Empty Container Handler	1 Nos	1 Nos
4	Mobile Hoppers	2 Nos.	-

Trucks Trailers shall be hired as per the requirement

(iv) Container Storage Yard

The Concessionaire shall make arrangements to provide storage facilities of international standard for import cargo, export cargo, hazardous cargo, long standing cargo and reefer cargo. Storage has to be as per IMO and GoI regulations. However, IMDG covered under IMO class 1 and 7 are not allowed. No CFS is allowed inside port limits.

(v) Reefer yards:



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The Concessionaire shall utilize the existing reefer yard within the Licensed Premises.

(vi) Other Buildings and Services:

The Concessionaire shall, at its own cost and expense, construct structures/buildings like Time Office, operation centre, canteen etc.

(vii) Support Facilities:

The traffic management plan within and to the terminal shall be fine-tuned in consultation with NMPT after taking into consideration minimum disturbance to traffic to and from other terminals.

(viii) Computer Communication:

The Concessionaire shall automate the operations of the Container Terminal and provide for information to be available on line. The Concessionaire shall install a computer system with adequate number of terminals for planning, including but not limited to, import, export, export intake, delivery, transfer to CFs, generation of reports, provision of information to Concessioning Authority etc. Information about the movement of containers should be fed to the computer immediately through walkie talkie or other suitable medium.

(ix) Electrification:

The Concessionaire shall have to put up necessary substation and associated distribution work for meeting the power requirement of proposed Cranes and other equipment. Illumination shall be adequately provided by the Concessionaire to enable twenty four (24) hour operation. Concessionaire shall provide power to the lighting system from its own distribution system on award of license. The illumination level shall be as per the requirement of Dock Safety Regulation.

However, the Concessionaire shall also provide a suitable standby power generator of adequate capacity to ensure the operation during power failure from the source of supply so that it does not impede the handling of containers at the container terminal.

The Concessionaire shall avail Electricity from Mangalore Electric Supply Company (MESCOM). All charges for obtaining approval from Mangalore Electric Supply Company (MESCOM) shall be borne by the Concessionaire.

The Concessionaire shall provide for standard, scale and level of luminosity in the water front and on shore-side including backup area in conformance to the requirements stipulated under Dock Safety Regulations of India.

Note:

The required luminosity on the quayside and the container yard as per current Dock Safety Regulations is 25 lux. As this may be difficult to achieve between rows of stacked containers, the Concessionaire may provide 20 lux on open areas and 5 lux measured 1 meter above ground level container block stack.



(x) Water:

Water supply for project facilities and services shall be obtained from Mangalore City Municipal Corporation. Water for fire-fighting purposes of the terminal shall be sourced from sea by the Concessionaire.

(xi) Fire-fighting Requirements:

The Concessionaire shall plan and provide for adequate fire-fighting equipment, fire hydrants etc. at the berths and in the back up area, keeping in view the need for maximizing dock safety and compliance with the prescribed regulations subject to the scale as stipulated by OISD guidelines or in compliance with applicable international codes/practices.

The Concessionaire may, at its own cost, expenses and charges, install any communication link with the Concessioning Authority's fire station. Mobile fire tenders of the Concessioning Authority may also assist the Concessionaire in the event of a fire in the Licensed Premises at the Concessionaire's cost, charges and expenses. However, the Concessionaire agrees and undertakes to make suitable and adequate arrangements for fire-fighting in the Licensed Premises including mobile fire tenders which should be available for dealing with any emergency in the Concessioning Authority's area as well. The Concessionaire agrees and undertakes to make provision of fire-fighting equipment in the Licensed Premises in addition to the equipment and the facilities of the Concessioning Authority required if any.

(xii) Security Arrangements:

The security of the port is vested with Central Industrial Security Force (CISF). The Concessionaire shall abide by the security regulations/procedures as stipulated by the Concessioning Authority from time to time. However the Concessionaire shall make its own arrangements for security in the container terminal, Stackyard etc. No charge need to be paid to NMPT towards the security personnel deployed at the all the gates. In case Concessionaire wants additional security arrangements, this can be made available on payment at reasonable time. The Concessioning Authority will assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority to provide all necessary to prosecute offenders who may be apprehended by the Concessionaire, its agents, contractors for committing any offence within the Licensed Premises.

(xiii) Security (under ISPS Code):

The International Ship and Port Security Code (ISPS Code) has been under implementation from July 2004 and India being a signatory to the IMOP Resolution on this adoption of the Code, it is imperative that all terminal operators in the port conform to the requirements of the Code. The Terminal will be termed as one of the port facilities of NMPT wherein Deputy Conservator is the Port facility security officer. The operator is required to identify one of their officers as Deputy Port Facility Security Officer of that terminal, who will be reporting to the Deputy Conservator directly for adoption and compliance of the Code.

The additional security cost involved in providing any infrastructure in the area allotted to the Concessionaire (as required under the ISPS Code) will be borne by the Concessionaire.



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IMO and ILO jointly are also in the process of coming out with a proposal on port security which may require further strengthening of security. Whenever such an additional code on port security is ratified by the Indian Government, the Concessionaire will be required to comply with such code at its cost.

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

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

(xiv) 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-13.

(xv) Others

The personnel and other related facilities should be capable of handling Container in accordance with the Performance Standards set out in Appendix 13.



ANNEXURE

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

A. General

The Concessionaire shall execute the project by completing civil works as per the Scope of Work 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-9001:2015) and environment management system (ISO 14001:2015) 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, Break Bulk & Container Terminals

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

Indian Standards for Construction of Ports and Harbours

IS 4651 - Part - 1 - 1974 Code of practice for planning and design of ports and harbours: Part 1 Site investigation

IS 4651-Part 2-1989 Code of practice for planning and design of ports and harbours Part 2 Earth pressure

IS 4651-Part III-1974 Code of practice for planning and design of ports and harbours: Part III: Loading



Bals



IS 4651- Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part 5-1980:	Code of practice for planning and design of ports and harbours Part:5 Layout and functional requirements
IS7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and harbour structures: Part 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: Part1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations - Part I: 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

Sab



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 traveling and special cranes for use in steel works

Material

IS 800: 1984	Code of Practice for general construction in steel
IS 2062: 2006	Hot rolled low medium and high tensile
Structural Steel	
IS 2644: 1994	High tensile steel castings
IS 2266: 2002	Steel Wire Ropes for General Engineering
Purposes-specification	
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
 IS 14999 / FEM 3rd edition Booklet 4 - Motors



Sub



BS 171, BS 3941, BS 3938 - Transformers
BS 99 - Fuses

Welding

- IS 7307: Part 1: 1974 Approval test for welding procedures Part 1
Fusion welding of steel.
- IS 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: U8 (4 Million loading cycles)
State of loading: Q3
Group classification: A8
Impact factor: 1.4
Duty factor: 0.9
Nominal load spectrum: 0.8 of rated capacity factor

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/ 4306-1985	Cranes - Vocabulary Part 2 Mobile cranes ISO
IS 13558: Part 2:1995/ Part ISO 7752 -2- 1986	Mobile Cranes
IS 13834 : Part 2: 1993/ ISO 4301 - 2 :1985	Cranes - Classification: Part 2 Mobile cranes
IS 13870: Part 2: 1993/ Wire ISO 4308 : 1988	Ropes - Part 2: Mobile Cranes - Coefficient of utilization
IS 14469: 1997/ 4305 - 1991	Mobile Cranes - Determination of Stability ISO
IS 14474: Part 1: 1997/ 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 I 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



Bals



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 1: 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
	High Voltage Alternating Current Circuit
	for Short-circuit and Switching
IS 14658: 1999	
Breakers - Guide	

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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,



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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	



Safety Standards

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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

[Besides the above, the Concessioneing Authority may prescribe standards specific to the port/project]



APPENDIX - 5

PROJECT SCHEDULE

The Project Facilities and Services for Phase I will be fully operational within 12 (Twelve) months from the Date of Award of Concession.

Phase -II shall be commenced within 18 months of achieving 1.80 lakhs TEU's or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier. The second phase shall be completed within one year of commencement of work.

Milestone Date	Activities/level of completion of Project	Physical Progress (%)*	Cumulative Progress (%)*
PHASE I			
Civil Works			
Within 12 (Twelve) Months from Date of Award of Concession	Land preparation for desired level including cutting, filling, removal of coal heaps, bushes and all other debris behind the berth of 1.5133 Ha	15%	15%
	Development of 1.5133 Ha for storage including, service roads, surface drainage, slot marking etc.		
	Electrical, Water supply, sewage and firefighting arrangements		
Mechanical Equipment			
Within 12 (Twelve) Months from Date of Award of Concession	Procurement of 2 (two) Nos. of Mobile Harbour Crane (MHCs)	80%	95%
	Procurement of 6 (six) Nos. of Reach Stackers		
	Procurement of 1 (one) No. Empty Container Handler		
	Procure of 2 (two) Nos. of Mobile Hoppers		
Electrical Works			
Within 12 (Twelve) Months from Date of Award of Concession	Laying of cables	3%	98%
Completion of work and commencement of commercial operation			
Within 12 (Twelve) Months from Date of Award of Concession	Commercial operations	2%	100%



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PHASE II			
Civil Works			
The second phase shall be completed within 12 (Twelve) Months of commencement of Phase -II.	Soil investigation of stackyard and Detailed Engineering	50%	50%
	Land preparation for desired level including cutting, filling, removal of building, trees, coal heaps, bushes and all other debris		
	Development of container parking yard including, surface drainage, slot marking etc.		
Mechanical Equipment & Electrical Works			
The second phase shall be completed within 12 (Twelve) Months of commencement of Phase -II.	Procurement of 1 (one) Nos. of Mobile Harbour Crane (MHCs)	45%	95%
	Procurement of 2 (two) Nos. of Reach Stackers		
	Procurement of 1 (one) No. Empty Container Handler		
	Electrical/IT works		
Completion of work and commencement of commercial operation			
The second phase shall be completed within 12 (Twelve) Months of commencement of Phase -II.	Operations	5%	100%

* as a percentage of Total Project Cost



APPENDIX-6

DESIGNS AND DRAWINGS

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 as specified in Appendix 4.

The stackyard area shall be developed by the Concessionaire as specified in Appendix 1. This area will include area electrical substation, control room, stores office, workshop, admin building, rest room, and security 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.

Any other details deemed fit as indicated by the Concessionaire in its bid.



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 of the Designs and Drawings;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as regards the Designs & drawings and all technical matters related to the Concession Agreement; and
- (vii) 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 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction including the



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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 Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

Upon remedial measures being taken by the Concessionaire for securing the



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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 Concessing 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 Concessing 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 its 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.



Subs



(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 Concessinare on or before commissioning of the project.

Permits /Clearance	Granting Authority
Environment Laws	State Pollution Board for CFE/ CFO
Plot Plan approval	Dock safety Inspector / OISD guidelines
Electrical Installations	Department of Electrical Inspectorate, Government of Karnataka
Fire Fighting Installation	Chief Fire Officer, Bangalore OISD guidelines or Applicable international codes / practices
Customs notification	Commissioner of Customs
Fire safety concerns	Port Fire Office for hot work Permits

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. Such permits and clearances under Environmental Law/other Applicable Laws as will be procured by the Concessinng Authority before the commencement of the Project, to be specified by the Concessinng Authority.

Activity	Granting Authority
Port limit notification	Ministry of Shipping, Government of India
Environment Clearance	Ministry of Environment & Forest, Government of India

The Environmental Clearance for the project has been obtained by the Concessinng Authority. 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 Ministry of Environment & Forest (MoEF) shall be that of the Concessionaire.

The Concessinng Authority may permit additional dredging and strengthening of berths. However, there shall be no financial liability to the Concessinng Authority.



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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)⁴

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 autonomous body 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 Concessing 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. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" (more particularly described in Appendix 1 and hereinafter referred to as "**the Project**");
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of _____, _____ and _____ ("**the Consortium**") OR the Board accepted the bid of _____ Ltd. ("**the Applicant**") and issued the Letter of Intent No _____ dated _____ ("**LOI**") to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, ("**the Concession Agreement**") the draft whereof was provided in the RFP;
- c) Pursuant to the LOI the Applicant/ Consortium has promoted and incorporated a special purpose company _____ ("**the Concessionaire**"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen Thousand Only) as security for due and punctual performance/discharge of its obligations under the

to be issued by a Scheduled Bank in India.



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 Rs16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen 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 Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/ non-exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until expiry of 126 (one twenty six) months from the Date of award of Concession and for a period of twelve months thereafter unless discharged/ released earlier by the Board in accordance with the provisions of the Concession Agreement.



Bals



The Guarantor's liability in aggregate shall be limited to a sum of Rs. 16,56,19,000/- (Rupees Sixteen Crores Fifty Six Lakhs Nineteen 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, deferrals, 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 "Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" 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 "Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" 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[●].

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE by:	SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)






- (xiii) **"Less than a Container Load"** (LCL) shall mean a container containing cargo belonging to more than one consignee in the vessel's manifest.
- (xiv) **"Normal Container"** shall mean general type containers, not falling under special categories mentioned subsequently.
- (xv) **"Other Cargo"** shall mean all cargo other than negative list as specified in Appendix 19.
- (xvi) **"Over dimensional Container"** shall mean a container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam etc. Damaged Containers (including boxes having corner casting problem) and Container requiring special devices for lifting is also classified as Over Dimensional Container.
- (xvii) **"Per day"** shall mean a calendar day or part thereof unless otherwise stated.
- (xviii) **"Port"** shall mean New Mangalore Port Trust.
- (xix) **"Port area"** means the custom bound area / Port operational Area of the Port.
- (xx) **"Reefer Container"** shall mean a refrigerated container used for carriage of perishable goods with provision for electrical supply to maintain the desired temperature.
- (xxi) **"Shut out Container"** shall mean a container, which enters into the Terminal as an export intake for a particular vessel as indicated by the Vessel Identification Advice No.(VIAN) Container Advance Information List (COPRAR) and is not shipped into the particular vessel for reasons whatsoever.
- (xxii) **"Transshipment Container"** shall mean a container, which is discharged from one vessel, stored in the yard and transported through other vessel.
- (xxiii) **"VIAN"** shall mean Vessel Identification Advice Number.
- (xxiv) **"Week"** shall mean a period of 7 days.

2. GENERAL TERMS & CONDITIONS

(i) The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(ii) System of classification of vessel for levy of Vessel Related Charges (VRC)

(a) A foreign going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at the first port of



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call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.

(b) A Foreign going vessel of foreign flag can convert to coastal run on the basis of a Licence for Specified Period or voyage issued by the Director General of Shipping and a custom conversion order.

(iii) Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate

(a) In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(b) In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.

(c) For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.

(iv) Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate

(a) Foreign going Indian Vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:

(i) Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.

(ii) Not converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.

* The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian port to another port in India, in Indian flag foreign going vessels without any custom conversion.

(b) In case of a Foreign flag vessel converted to coastal run on the basis of a Licence for Specified Period or voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/ container.

(v) (a) Coastal goods transported between an Indian port on east coast and another Indian port on west coast or vice versa, by a vessel through the territorial waters of Sri Lanka, whether or not calling any port in Sri Lanka in between and without change of vessel in terms Notification No.38/2018-Customs (N.T.) dated 11 May 2018 of Central Board of Indirect Taxes and Customs shall be eligible for concession in vessel related charges and cargo related charges.



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- (b) Coastal goods transported between an Indian port on east coast and a river port in India or vice versa, by a vessel through a route passing through the Bangladeshi waters and without change of vessel in terms Notification No.38/2018-Customs (N.T.) dated 11 May 2018 of Central Board of Indirect Taxes and Customs shall be eligible for concession in vessel related charges and cargo related charges.
- (vi) (a) The cargo / container related charges for all coastal cargo/containers, other than thermal coal, POL including Crude Oil, iron ore and iron pallets, should not exceed 60% of the normal cargo/container related charges.
- (b) Container / cargo from a foreign port which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will also qualify insofar as the 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.
- (vii) Interest on delayed payments / refunds:
- (a) The user shall pay interest at the rate of 15% 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 15% per annum on delayed refunds.
- (c) The delay in refunds by the operator will be counted beyond 20 days from the date of completion of services or on production of the documents required from the users, whichever is later.
- (d) The delay in payments by the users will be counted beyond 10 days after the date of raising the bills by the operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services as stipulated in the Major Port Trusts Act, 1963 and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (viii) Containers less than and up to 20' in length will be reckoned as one TEU for the purpose of tariff.
- (ix) No claims for refund shall be entertained unless the amount refundable is Rs.100/- or more. Likewise, operator shall not raise any supplementary or under charge bills, if the amount due to Terminal is Rs.100/- or less.
- (x) All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (a) The rates prescribed in this Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The operator may, if he so desires, charge lower rates and / or allow higher rebates and discounts.

(b) The operator may also, if it so desires, 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.



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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 charges 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.

(xi) Users will not be required to pay charges for delays beyond a reasonable level attributable to the operator.

(xii) In case a vessel idles due to breakdown or non-availability of the shore based facilities of the operator or any other reasons attributable to operator, rebate equivalent to berth hire charges payable to the New Mangalore Port Trust accrued during the period of idling of vessel shall be allowed by the operator.

3. CONTAINER RELATED CHARGES

3.1 GENERAL TERMS AND CONDITIONS

(i) Containers less than and up to 20' will be reckoned as one TEU (Twenty-foot Equivalent Unit) and more than 20' and up to 40' will be reckoned as one FEU (Forty-foot Equivalent Unit) for the purpose of tariff.

(ii) All charges for containers more than 20' in length and up to 40' in length will be 150 percent of the applicable charges prescribed and for containers above 40' in length it will be 200 percent of the applicable charges prescribed on per TEU basis in the Scale of Rates.

(iii) Containers other than that of standard size requiring special devices/slings/handling will be charged twice the applicable rates. Such containers will also include damage containers and any other type requiring special devices.

(iv) The tariff for hazardous and transshipment containers shall be 1.25 times that of a normal container.

3.2 Charges for Handling and Movement of Containers

The following consolidated charges for handling and movement of container shall be payable by the Shipping Lines or Agents of vessels or cargo agents for services rendered in respect of containers and containerised cargo passing through the port.

A. Normal & Reefer Containers

8.1.1.1.1.2 1. No	Description	8.1.1.1.3 Rate per TEU (in Rs.)			
		Foreign Container		Coastal Container	
		Loade	Empty	Loade	Empty



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		d		d	
1.	From Ship to container yard or vice versa	3,125.51	2,500.42	1,875.31	1,500.24
2.	From Container yard to Railway flat or vice versa	1,562.75	1,562.75	1,562.75	1,562.75
3.	From Container yard to Truck or vice versa	468.82	468.82	468.82	468.82

B. Hazardous Containers

Sl. No	Description	Rate per TEU (in Rs.)	
		Foreign Container Loaded	Coastal Container Loaded
1.	From Ship to container yard or vice versa	3,906.89	2,344.13
2.	From Container yard to Railway flat or vice versa	1,953.44	1,953.44
3.	From Container yard to Truck or vice versa	586.03	586.03

C. Transshipment Containers

Sl. No	Description	Rate per TEU (in Rs.)			
		Foreign Container		Coastal Container	
		Loaded	Empty	Loaded	Empty
1.	Transshipment container	3,906.89	3,125.51	2,344.13	1,875.31

Notes:

(i) A container originally declared as transshipment container, subsequently moved by rail or road will lose its identity as a transshipment container and shall be treated as a normal import container and prescribed charges as applicable shall be payable.

(ii) A container from foreign port landing at the container terminal for subsequent transshipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transshipment charges prescribed for foreign going vessels and 50% of that prescribed for coastal category.



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D. Over Dimensional Cargo Containers

Sl. No	Description	Rate per TEU (in Rs.)			
		Foreign Container		Coastal Container	
		Loaded	Empty	Loaded	Empty
1.	From Ship to container yard or vice versa	6,251.03	5,000.81	3,750.61	3,000.50
2.	From Container yard to Railway flat or vice versa	3,125.51	3,125.51	3,125.51	3,125.51
3.	From Container yard to Truck or vice versa	937.65	937.65	937.65	937.65

General Note: The consolidated charges as above include the following elements viz. stevedoring, use of Gantry crane, use of transfer crane, wharfage on tare weight of containers, wharfage on containerized cargo & transportation.

3.3 Dwell Time Charges for Container, stored in the Port Premises

S. No	Particulars	Rate per container per day or part thereof (in Rs.)					
		Foreign			Coastal		
		Upto 20' in length	Over 20' to upto 40' in length	Above 40' in length	Upto 20' in length	Over 20' to upto 40' in length	Above 40' in length
1.	Import-loaded						
	First 4 days	Free	Free	Free	Free	Free	Free
	5-8 days	193.03	386.05	579.08	193.03	386.05	579.08
	9-15 days	386.05	772.12	1158.17	386.05	772.12	1158.17
	Thereafter	772.12	1544.23	2316.35	772.12	1544.23	2316.35
2.	Export-Loaded						
	First 5 days	Free	Free	Free	Free	Free	Free
	6-8 days	193.03	386.05	579.08	193.03	386.05	579.08
	9-15 days	386.05	772.12	1158.17	386.05	772.12	1158.17
	Thereafter	772.12	1544.23	2316.35	772.12	1544.23	2316.35
3.	Import/Export-						



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	Empty						
	First 4 days	Free	Free	Free	Free	Free	Free
	5-8 days	193.0 3	386.05	579.08	193.0 3	386.05	579.08
	9-15 days	386.0 5	772.12	1158.1 7	386.0 5	772.12	1158.1 7
	Thereafter	772.1 2	1544.2 3	2316.3 5	772.1 2	1544.2 3	2316.3 5
4.	Transshipment-L oaded						
	First 15 days	Free	Free	Free	Free	Free	Free
	16-30 days	193.0 3	386.05	579.08	193.0 3	386.05	579.08
	Thereafter	386.0 5	772.12	1158.1 7	386.0 5	772.12	1158.1 7
5.	Transshipment- Empty						
	First 7 days	Free	Free	Free	Free	Free	Free
	8-15 days	193.0 3	386.05	579.08	193.0 3	386.05	579.08
	Thereafter	386.0 5	772.12	1158.1 7	386.0 5	772.12	1158.1 7

Notes:

- (1) (a) Free dwell-time (storage) period for import containers shall commence from the day after the day of landing of the container and for export containers the free period shall commence from the time container enters the terminal.
- (b) For the purpose of calculation of free time, Custom notified holidays and Terminal's non-operating days shall be excluded.
- (2) Transshipment containers subsequently changing the mode of dispatch locally or to the container freight station for destuffing/stuffing shall lose the concessional dwell time as prescribed in Item (4) above. Dwell time charges for such containers shall be recovered at par with import containers as prescribed in item no. 1 or 2 as applicable.
- (3) The total storage period for a shutout container shall be calculated from the day following the day when the container has become shutout till the day of Shipment/ delivery.
- (4) Over high and over dimensional containers shall attract twice the normal applicable charges.

Hazardous containers shall attract 1.25 times the normal applicable charges.

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(6) In the case of auction containers, after the auction is over, the empty containers will attract the dwell time charges as empty containers from the following day the destuffing is completed.

(7) Free storage period for export loaded and empty containers shall commence from the time the container enters the terminal.

(8) The storage charges shall not accrue for the period during which the operator is not in a position to deliver containers for reasons attributable to it when requested by the user.

(9) The storage charges on abandoned FCL containers/shipper owned containers shall be levied up to the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following:

(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 along with 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 the necessary actions are taken by the shipping lines for destuffing of 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 day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and de-stuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

3.4 Charges for Miscellaneous Services rendered to the Container Vessels

A. Reefer Monitoring and Connection

S. No	Description	Rate per TEU (in Rs.)		
		Foreign Vessel	Going Coastal	Vessel



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		Loaded	Empty	Loaded	Empty
1	Additional charges per 4 hours or part thereof for electricity consumption and monitoring of reefer containers	321.12	321.12	321.12	321.12

Note: Additional electricity charge at the prescribed rates will be applicable in case of Reefer Containers also.

B. Other Services Rendered

S. No	Description	Rate per TEU (in Rs.)			
		Foreign Vessel		Coastal Vessel	
		Loaded	Empty	Loaded	Empty
1	Shifting of containers from one yard to another yard within the terminal for customs inspection or any other purpose and subsequent loading of containers for delivery.	1557.45	1557.45	1557.45	1557.45
2	Additional service charges for stacking containers in designated yard for custom examination or for any other purpose by prior arrangement.	467.23	467.23	467.23	467.23

C. Opening of Hatch Cover and Replacing it

S. No	Description	Rate per Hatch Cover (in Rs.)		
		Foreign Vessel	Going	Coastal Vessel
		Loaded		Loaded
1	When placing it on the Quay	6229.77		3737.87
2	Without placing it on the Quay	3018.54		1811.13

Note: If only one operation is carried out, half of the hatch cover handling charges as above shall be levied.

D. One Hatch to Another Hatch or within the Same Hatch

S. Description	Rate per TEU (in Rs.)
<i>Sub</i>	



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No		Foreign Going Vessel		Coastal Vessel	
		Loaded	Empty	Loaded	Empty
1	Hatch to hatch shifting (involving 1 move only)	1557.45	1557.45	934.47	934.47
2	Other than (a) mentioned above	6229.77	6229.77	3737.87	3737.87

4. OTHER CARGO RELATED CHARGES

A. Cargo Handling Charges

S. No.	Particulars	Rate in Rs. per metric tonne (Import)	
		Foreign	Coastal
1.	Handling Charges for other cargo other than negative list as specified in Appendix 19	104.98	62.99

Note: The handling charges for Other Cargo (other cargo other than negative list as specified in Appendix 19) prescribed above is a composite charge for unloading of the cargo from the vessel and transfer of the same up to the point of loading onto trucks, sweeping of cargo on the wharf, dust suppression services and all other miscellaneous services not specifically included in SOR.

B. Storage Charges

The storage charge has not been prescribed as DPR has not proposed any Storage area for Other Cargo.

5. GENERAL NOTE TO CHAPTER 2, 3 AND 4

- (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 2019 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 license 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



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- 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 License 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 License 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.



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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 separately. 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.

Schedule of Lease rent for lands belonging to NMPT at various locations.

(A). Lease rent of Port lands at various location:
(/sq. mtr./month)

Sr. No.	Location	For open areas	For paved areas	For covered space
1.	Panambur	29.802	45.972	80.61
		24.83 [For Storage of EXIM cargo on License basis, Vessel to Vessel]		
2.	Custom Bond Area	24.83	45.972	80.61
3.	Marshalling Yard	29.724	45.822	80.316
4.	Commercial Yard	81.32*	117.31	194.41
5.	Tannirbavi	49.67	76.62	134.35
6.	Kudupu	53.13	90.93	171.92
7.	Bondel	40.03	66.28	122.53

*The rate proposed for open space for EXIM Cargo in custom bond area will apply for areas leased in the commercial zone where EXIM cargo is stored, on vessel to vessel basis, till the areas lease out for commercial purposes.

Notes:

(i). The rates prescribed shall be applicable with effect from 20 February 2017 till 19 February 2022 and will be reviewed / revised after five years.

(ii). The lease rent shall bear an escalation @ 2% (compoundable) per annum from 20 February 2018 till 19 February 2022.

(iii). For the allotment inside the Security Wall, a surcharge of 10% on the rate prescribed above will be levied.

(iv). Security Deposit equivalent to one month's licence fee shall be applicable at the time of allotment for license upto 4 or 6 months. In case of lease of land, refundable Security Deposit of equivalent to two years lease rental will be applicable. The Security Deposit shall be refunded without interest after the land is vacated fully after adjusting any amount that may be due to the NMPT.

(B). Way leave charges for laying of pipelines/ service conduits : The rate for open area as applicable to the location given in the table above for the area occupied by the pipelines / service conduits.

Note to Schedule B above:



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(i). For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

(ii). The terms of conditionalities for issuance of Right of Way Permission for laying Pipelines/ conveyors etc., will be governed by the amended LPG 2014 issued by the Ministry of Shipping and as amended from time to time.

(C). Water Front Charges:

50% of the license fee for the land abutting to the waterfront for construction of jetties, submarine pipeline, etc. and will be charged as a way leave permission. For submarine pipeline, the waterfront charges will be for the area occupied by the pipeline and the area should be arrived at based on the note to (ii) under schedule B above.

General Notes:

(i). All the conditions / notes stated herein shall apply to the extent they are not inconsistent with the conditions prescribed in the amended Land Policy guidelines 2014 by the Government of India and as amended from time to time. In case of disagreement, the conditions prescribed by the Government in the Land Policy guidelines shall prevail.

(ii). Allotment:

Persons requiring allotment of land/ space for storage of their goods outside the security compound wall or within the security compound wall of New Mangalore Port Trust (NMPT) on monthly license basis may apply in writing to NMPT for a license in the form prescribed by the NMPT from time to time. But it shall be at the discretion of the NMPT to allot or refuse to allot such space/ land no subletting of the licensed premises shall be allowed.

(iii). Licensee's Responsibility:

In applying for land/ space for storage of goods/ cargo, the applicants for land/ space shall accept all risks and responsibility for goods so stored/ stocked. The locking by the NMPT or sheds partly or wholly allotted to the licensees whether inside or outside the security compound wall shall not be regarded as making the NMPT a bailee of the goods so stores unless a receipt in this regard is passed by the NMPT to them. The occupation of land/ space in open or under cover shall be reproduced in the license deed/ permit/ agreement.

Encroachment or unauthorized occupation of the NMPT's land and stacking of goods/ cargo on the NMPT's Railway track, plants, equipment, approach road etc., causing obstruction to the movement of traffic by the licensee will involve a liability to pay



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penal rate as specified below in addition to the cost of rectifying damages caused to the NMPT's properties. If the licensee fails to remove the goods from the encroached area in spite of notice to do so, the goods will be removed elsewhere by the NMPT at the risk and the cost of the licensee and penal license fee at the following rate shall be levied on the land occupied by the goods so removed.

(a). Three times the normal license fee till vacant possession is obtained by the port or any other Land Policy Guidelines notified by Government time to time.

(iv). Conditions :

(a). Goods stored under the license deed/ permit/ agreement shall be at the entire risk and responsibility of the licensees. The NMPT will not in any way take responsibility for pilferage, theft, fire or loss thereof. The licensees shall post their own watch to safeguard the goods stored at their allotted space and to prevent any unauthorized occupation of such land/ space by others.

(b). The Licensee shall not construct or put up any permanent structure, buildings, erection or convenience or canteens on the land/ space occupied under the license deed/ permit. The licensee shall restore the land/ space to its original condition at the time or termination of the license permit and if the licensee fails, the NMPT will arrange for such restoration at the cost risk and responsibility of the licensee.

(c). The license fees or charges shall be paid from the date of receipt of the allotment letter by the licensee or occupation of the land/ space by the licensee, whichever is earlier, in accordance with the rates prescribed in the NMPT's Schedule of Rates. The license fee shall be remitted for each calendar month for subsequent period in advance to the NMPT i.e. before 1st of every month. In case the payment is not received before the due date, penal interest at 10 Year Gsec plus 6% (Six percent) per annum revised from time to time on the accumulated arrears in addition to the license fee. [Penal interest is subject change as per the guidelines issued from time to time by Competent Authority].

(d). The licensee shall vacate the land/ space occupied by them if the license permit is not renewed at the latest. In case the licensee fails to hand over the land/ space in vacant possession on the date of expiry of the license/ permit granted after removing of such structures or construction put up, the NMPT shall have the right to remove such structures and the goods stored in such land/ space to any other alternative land/ open or covered space in any part of the Port's premises at the cost and risk and responsibility of licensees and in addition, penalty license fee at the following rates shall be levied on the space occupied by the goods so removed.

(i). Three times the normal license fee till vacant possession is obtained by the port or any other Land Policy Guidelines notified by Government time to time.

(ii). Terms and conditions as stipulated in the allotment order/ lease/ license deed.

(e). The permit shall lapse automatically at the expiry of the calendar month for which it has been issued. The license shall be up to a maximum period of Four (4) months on vessel to vessel basis for storage of EXIM Cargo (both inside & outside Security Compound wall) and Six (6) months for coastal movement of cargo and license fee is levied as per the notified schedule of Rates. There shall be no provision for renewal of licence. The occupation of land/ premises exceeding 4 months on vessel to vessel basis for storage of EXIM Cargo (both inside & outside Security Compound wall) and Six (6) months for coastal movement of cargo without



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subsequent allotment shall be treated as unauthorized occupation and compensation 3 times the normal license fee shall be paid by the occupant and charges will attract penal interest at the rate 10 Year Gsec plus 6% (Six percent) per annum (or) as per the lease/ license deed/ allotment orders. On the accumulated arrears and shall be paid in addition to the license fee. In any case the license fee should not accumulate for more than 15 days from the date when advance license fee become payable. Penal interest subject change as per the guidelines issued from time to time by Competent Authority

(f). No licensee shall convert the space allotted to him/ them into private bonded areas except with the written permission of the NMPT. Failure to obtain the prior written permission from the NMPT shall attract levy of penalty as per prevailing Guidelines time to time.

(g). (i). Security deposit equivalent to one month's license fee shall be applicable for vessel to vessel for license upto 4 or 6 months. The Security Deposit without interest shall be refunded after the land is vacated fully after adjusting any amount that may be due to the NMPT.

(ii). In case of lease of land other than those mentioned at (a) above, refundable Security Deposit of equivalent to two years lease rental will be applicable.

(iii). The Security Deposit shall be refunded without interest after the land is vacated fully after adjusting any amount that may be due to the NMPT.

(iv). In case, the security deposit is not refunded within 20 days from the date when land/ space is finally vacated and production of documents by the licensee, the NMPT shall pay penal interest at 10 Year Gsec plus 6% (Six Percent) + 2% per annum as revised from time to time on such delayed refunds.

(h). The NMPT shall have the right at any time to resume the possession of the land/ space wholly or partly which is required by the Port/ not occupied by the licensee, in which event the proportionate reduction in license fee will be allowed. In any case, the NMPT shall give a notice period of 7 days in case license is for less than four months for EXIM Cargo and six months for Coastal movement cargo. In case of unauthorized occupation or encroachment or on normal expiry of the license tenure, no such notice shall be issued and the port shall resume the land/ space required by the Port immediately. In case of such a resumption or possession of land, the licensee shall not be entitled to claim any compensation on account of such resumption or possession or to remove and take away improvements, if any, made by him on the land.

(i). The licensee shall have the right to appeal against resumption of the land to the Board of Trustees of the New Mangalore Port Trust within a period of 30 days from the date of receipt of the Order appealed against and the decision of the Board of Trustees of the NMPT is final in this regard.

(j). The licensee / allottee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.

(k). The licensee / allottee shall agree that all payments and expenses of whatever sort due to the Port in respect of land/ space allotted to the licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT.



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(l). The licensee / allottee shall comply with all rules and regulations that may from time to time be issued by the local authorities or the inspector of Explosives, the Department of Explosive, Commissioner of Customs and Government of India or whosoever concerned in relation to the storage of goods under the license/ permit.

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APPENDIX-14

MINIMUM GUARANTEED CARGO

Year	Minimum Guaranteed Cargo (in lakh TEUs)
1st year of Operation	0.91
2nd year of Operation	0.97
3rd year of Operation	1.02
4th year of Operation	1.08
5th year of Operation	1.14
6th year of Operation	1.18
7th year of Operation	1.23
8th year of Operation	1.28
9th year of Operation	1.33
10th year of Operation	1.39
11th year of Operation	1.44
12th year of Operation	1.5
13th year of Operation	1.56
14th year of Operation	1.62
15th year of Operation	1.69
16th year of Operation	1.69
17th year of Operation	1.69
18th year of Operation	1.74
19th year of Operation	1.79
20th year of Operation	1.84
21st year of Operation	1.89
22nd year of Operation	1.94
23rd year of Operation	1.98
24th year of Operation	2.03
25th year of Operation	2.08
26th year of Operation	2.13
27th year of Operation	2.18
28th year of Operation	2.23
29th year of Operation	2.28



APPENDIX-15

PERFORMANCE STANDARDS

The Performance Standards prescribed in this Appendix will assess productivity of the terminal/berth etc. as also the manner in which the assessment of compliance/shortfall in compliance will be made.

Performance Standards

1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for Container Cargo and Other Cargo.

In case of Other 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 (either loaded/unloaded) 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.

In the case of containers the crane rate shall be measured by dividing total number of TEUs lifted on/off from ships by the elapsed crane time. The elapsed crane time is the total allocated crane hours less operational and non-operational delays.

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

Cargo Category	Indicative Norms
Container	
(Main line vessel)	[20 moves per hour]
(Feeder vessel)	[14 moves per hour]
Other Cargoes	
For terminals capable of handling up to 45,000 MT parcel size of Other Cargo (Fertilizer, Limestone, Gypsum, Dolomite).	12,500 T/day

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



2. Transit Storage Dwell Time:



(a) Containers:

The Transit Storage Dwell Time for a container shall mean the total time for which the container remains in the terminal. The Transit Storage Dwell Time for containers shall be calculated as an average and shall be the sum of the transit storage of each container handled during the month at that terminal divided by the number of containers. To further clarify, the date and time a container is discharged from the vessel till the said container leaves the out - gate of the Terminal, is the total transit storage time for import box. In case of export the time and date from which the container enters the terminal till the time and date it is loaded on to a vessel will be the storage time. The details of time of discharge, gate-in, gate-out and loading need to be maintained in respect of each container including ICD containers. Unclaimed cargo or any cargo that has been detained by the customs or any Government Authority may be excluded.

Weightage in case of a shortfall in meeting the prescribed performance standard - 20%

(b) Other Cargoes:

The Transit Storage Dwell Time for Other Cargoes (excluding Fertilizer) 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) = $\frac{OB + Received/Despatched}{CB}$ No. of days

OB = Opening Balance, CB = Closing Balance.

Average Parcel Sizes (B) = $\frac{P1 + P2 + \dots + Pn}{n}$ (no. of parcels)

P1, P2Pn are parcel size of each vessel in a month.

Transit Storage Time for Bulk Cargo = $0.5 \times \frac{B}{A}$

Note: Performance standards indicated at 1 and 2 above shall be considered for indexation.

3. 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 for Other Cargo (Single operation)	Deleted
(ii) Truck for Other Cargo (Double operation)	Deleted



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b. (i) Trailer for container (single operation)	2 hours
(ii) Trailer for container (double operation)	4 hours
c. (i) Rake for ICD container (Single operation)	6 hours
(ii) Rake for ICD container (Double operation)	12 hours

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 Concessioneing 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, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be $(0.7 x + 0.2 y + 0.1 z) \%$.



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APPENDIX-16

ESCROW AGREEMENT

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

AMONGST

1. [• LIMITED], a company incorporated under the provisions of the Companies Act, 1956/2013 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 Senior Lenders' Representative)] and having its registered office at [•] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **"Senior 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 autonomous body 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 Concessions Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

- (A) The Concessions 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 Senior 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



[Handwritten Signature]



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;

"Senior Lenders' Representative" means the person referred to as the r Senior 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 Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior Lenders.

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

1.2.3 References to 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



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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 Concessioneing Authority, the Senior Lenders, the Senior 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 Concessioneing Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessioneing Authority, the Senior Lenders/Senior Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Concessioneing 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 Concessioneing Authority, the Senior 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 Senior Lenders/Senior Lenders Representative and thereafter by the Concessioneing Authority.



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2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Senior 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 Concessioneing Authority, the Senior Lenders (through the Senior Lenders' Representative) and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Concessioneing Authority, the Senior Lenders' and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Selectee, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a Party hereto and the Selectee shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Selectee.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

- (a) all monies received in relation to the Project from any source, including the Senior Lenders;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and



- (e) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the 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 Senior Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments in a month :

- (a) all taxes due and payable by the Concessionaire;
- (b) towards License Fee;
- (c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (e) towards its debt service obligations under the Financing Documents;
- (f) towards Royalty and other sums payable to the 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 Senior 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 Senior Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.



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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 Senior 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 Senior Lenders and the Concessions Authority and the Escrow Agent has received a confirmation of final settlement by the Senior 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 Senior Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Senior 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 Senior 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 Senior 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.



ESCROW DEFAULT

Subh



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 Concessioneing Authority or the Senior 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 nior Senior Lenders, or any of its obligations to the Concessioneing 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 Concessioneing Authority and the Senior Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior 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 Senior 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 Senior 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 Senior 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 Concessioneing Authority, Escrow Bank and the Senior Lenders, acting through the Senior 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 Concessioneing 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 Concessioneing 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 Concessioneing 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.



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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 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).



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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.



A handwritten signature in blue ink, appearing to be "S. S. S.", written over a horizontal line.



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 Concessing Authority:
Chairman,
New Mangalore Port Trust,
Panambur,
Mangalore-575 010
Fax No: 0824 2408390
Email: chairman@nmpt.gov.in

The Concessionaire:

The _____ Managing _____

Director
Ltd

Fax _____
Email: _____ No. _____



Senior Lenders/Senior Lenders representative:

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 SENIOR LENDERS by the Senior 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.)



APPENDIX-17

[BASE CASE FINANCIAL MODEL (BCFM)]

[Note: The model BCFM would be developed with the appropriate inputs from the financial and technical consultants. However such Financing Plan would need to be customized based on each project and its requirements. Such model Financing Plan would essentially include;

- (i) Estimated Project Cost,
- (ii) License Fee and Royalty payable to the Concessioning Authority,
- (iii) annual estimated Project revenue,
- (iv) equity contribution,
- (v) cargo handling projections estimated by Concessionaire,
- (vi) discounted net present value of the cash flows,
- (vii) Equity IRR,
- (viii) debt equity ratio, and
- (ix) debt service ratio.

Such Financing Plan would be submitted by the concessionaire **and got approved by the Concessioning Authority** at the time of Financial Close.

Note: Such format of the Financing Plan shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.



APPENDIX-18

MONITORING ARRANGEMENT

New Mangalore Port Trust

Construction Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessioneing Authority

S.No.	Obligations of the Port (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
1(a)	Meeting the Conditions Precedent (Clause 3.1) <ul style="list-style-type: none"> • Procurement of clearance including from Ministry of Environment & Forests • Handing over physical possession of Project Site/ Port Assets for the project (Stage wise, if so envisaged) • Putting in place arrangement for provision of Supporting Project Infrastructure 		
1(b)	Informing the Concessionaire about the fulfillment of Conditions Precedent (Clause 3.1)		
2	In case conditions precedent are not complied within the specified time, details of extension of time availed (Clause 3.4)		
3	Recovery of liquidated damages for failure to fulfill Conditions Precedent (Clause 3.5)		
4	Appointment of Independent Engineer - 5.1		
5	Furnishing of comments/ observations on the Designs & Drawings to Independent Engineer - 6.2 (b)		
6	Grant applicable permits, approval and consents or render assistance as may be required by concessionaire under concession agreement - 6.5 (a)		
7	Make available records of sub soil investigation, if requested - 6.5 (b)		
8	Assist the concessionaire in obtaining immigration clearance, employment permits and residential premises for any foreign personnel engaged or employed by concessionaire. - 6.5 (d)		
9	Assist concessionaire or contractor to import into India all items of equipment and material required for the project. - 6.5 (e)		
10	If required on advice of Independent Engineer, suspend the construction works (Clause 6.6(a)) On advise of IE, revoke the suspension after the		



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	rectifications (Appendix 7)		
12	If required as advised by Independent Engineer, concession authority may extend the construction phase, if the delay is not attributable by concessionaire - 6.2(e)		
13	To witness the tests along with Independent Engineer to ensure project meets with construction standards. - 6.7 (a)		
14	To verify the performance security is maintained as per clause 4.1, or otherwise termination of agreement for non-maintenance of performance security as per clause 15.1 (a)(xii)		
15	Recovery of liquidated damages if any from performance guarantee for failure to achieve milestones (Clause 6.9)		
16	In case of Change of Scope, whether procedures laid down in Article 6.8 is followed		
17	Ensuring issue of Completion Certificate by Independent Engineer (Clause 6.7)		
18	In case aggregate delay exceeds 180 days or LD exceeds 5% of project cost, terminate the agreement (Clause 6.9)		
19	Is any action required on monthly Inspection report from IE (Appendix 7)		
20	In case concessionaire fails to complete the works on account of Force Majeure or due to reasons attributable to authority, reduce the scope of work and recover the 80% of sum saved from work not completed (Clause 6.7(e))		
21	In event of non-compliance of conditions precedent within the time including the extended time if any termination of the agreement (Clause 3.6)		
22	Ensuring Operation of Escrow account in an orderly manner (Clause 9.5)		
23	Issue of Notice for a Force Majeure Event (Clause 14.5)		
24	In case of Force Majeure Event, whether extension of time has been granted (Clause 14.9 (b))		
25	In the event of termination due to Force Majeure Event, whether compensation has been paid as per clause 17.1(a)		
26	Issue of Notice on occurrence of an event of default (Clause 16.1)		
27	Informing Senior Lenders of Intent to Terminate (Clause 16.1)		
28	Termination Payment for termination due to Port Event of Default as per clause 17.1(c)		
29	Exercising Rights and meeting obligations upon termination (Clause 16 and 17)		
30	Assessment of change in law and treatment of costs out of change in law (Clause 13.2(b))		



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31	Amicably resolving disputes (Clause 19.1 & 19.2)		
32	Declaration of Project Facilities & Services as ready for operation in accordance with Section 37 of MPT Act (Clause 6.5 (c))		
33	Execution of Substitution Agreement within 30 days of notice from the concessionaire as per clause 12.3 (b) v		
34	Any other project specific provision, observation, complaint or suggestion		

Construction Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessioneing Authority

S.No.	Obligations of the Port (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
1	Providing and maintaining the Performance Guarantee (Clause 4.1)		
2 (a)	Compliance of Conditions Precedent (Clause 3.1(a)) <ul style="list-style-type: none"> • Execution of Escrow Agreement and opening of Escrow Account • Procuring all Applicable Permits as per Appendix 8 • Submission of Financial Package, Financing Documents Financial Model and other Financial Close documents to Port • Submission of Confirmation of Representation & Warranties by Consortium Members • Submission of legal opinion with respect to the authority of concessionaire • Furnishing a copy of Management Contract, if applicable 		
2 (b)	Informing Concessioneing Authority about fulfillment of Conditions Precedent (Clause 3.2)		
3	In case Conditions Precedents are not complied within the specified time, details of extension of time availed (Clause 3.5)		
4	Submission of Designs and Drawings to the Independent Engineer & Concessioneing Authority (Clause 6.2 and Appendix 5)		
5	Arrangement of financial and other resources as per Financing Plan as evidenced by Escrow		


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	Account (Clause 6.4(a))		
6	Carry out works in compliance with the Construction Standards (clause - 6.4 (b))		
7	Obtain Applicable Permits and comply with Applicable Laws. - 6.4 (d)		
8	Providing access to Port representatives for inspections for ascertaining compliance of requirements (Clause 6.4(c))		
9	Submission of Monthly Progress Reports to Independent Engineer (Clause 6.4(f))		
10	Removal of Defects/ deficiencies as observed by Independent Engineer (Clause 6.4(f))		
11	Ensure safe and timely construction and completion of the Project/ - 6.4 (h)		
12	At least 60 days prior to the likely completion of the Project, notify the Independent Engineer of the date when it intends to commence commercial operations - 6.7 (a)		
13	Providing assistance to Independent Engineer for conducting all requisite Tests on structures/equipments etc., - 6.7 (a)		
14	To obtain Provisional Certificate of Completion as per clause 6.7(d)		
15	To complete all outstanding items listed in Punch List within 90 days or extended period by Concessioning Authority. - 6.7 (d)		
16	Procurement of Security Clearance for Management Contractor. - 12.1 (f) (ii)		
17	Pay License fee annually and Royalty monthly - 9.1 (a) and 9.2		
18	Pay Liquidated Damages to Concessioning Authority, if applicable. - 6.9		
19	Maintenance of Insurance as per clause 12.1(c)		
20	In case of Execution of substitution agreement, whether notice has been issued by the concessionaire to the port as per clause 12.3 (b) v		
21	Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2		

Operation Stage Monitoring Report of (Name of the Project) for the month ended.....

Compliance of Obligations of the Concessionaire

S.No.	Obligations of the Port (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
			



1	Prompt commencement of operations after "Ready for Operation" declaration (Clause 7.1(a)(i)(a))		
2	Operation of Project Facilities as per "Project Requirement" (Clause 7.1(a) (i)(c))		
3	Achieving Performance Standards (Clause 7.1(a) (i)(d))		
4	Compliance of O&M and Safety Standards (Clause 7.1(a) (i)(e))		
5	Rapid & Effective response in the event of accident/ emergency (Clause 7.1(a) (i)(f))		
6	Replacement and repair of project facilities in a timely manner (Clause 7.1(a) (i)(g))		
7	Manage & Operate Project Facilities on "First Come First Served " basis except for Priority & Preferential berthing as per GOI guidelines (Clause 7.1(a) (i)(h))		
8	Maintenance of Proper Records relating to Revenue and operation of Project Facilities (Clause 7.1(a) (i) and 9.4)		
9	Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws (Clause 7.1(a) (i) (j))		
10	Prevention of encroachment / unauthorized use of Project Facilities (Clause 7.1(a) (i)(l))		
11	Repair & Maintain all Project Facilities as per Agreement provisions & Good Industry Practice at all times during the Concession Agreement.7.1(a)(ii)		
12	Repair, Replace or Restore the damaged Project Facilities at its own costs.7.1(a)(iv)		
13	Obtaining prior written permission of concessioning authority for removal of assets clause 7.1(a)(v)		
14	Replacement of equipments/ assets as per Good Industry Practice (Clause 7.1(a) (iii))		
15	Compliance with Monthly Reporting Requirements(Clause 7.1(a) (viii))		
16	Cooperation to experts appointed by concession authority in access for inspection for safety audit once in a year (Clause 7.1(a) (vii))		
17	Cooperation to port representatives for inspection and review of operations also to compliance with requirements of Agreement (Clause 7.1(a)(vii))		
18	Installation & Operation of specified computer system and Network as specified by Concession Authority (Clause 7.1(a) (ix))		
19	Ensuring the prescribed Security Arrangements conforming to ISPS code(Clause 7.1(a) (x))		
20	Employment of personnel of foreign origin only after requisite approvals from Government of India (Clause 7.1(a) (xi))		



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21	Employ qualified and skilled personnel.7.1(a)(xi)		
22	Meeting Minimum Guaranteed Cargo requirements(Clause 7.1(a) (xii))		
23	To recover tariff from users of the project facilities as per Tariff Order Notification and deposit all Tariff in Escrow Account (Clause 8.1)		
24	If requested by CA, collect the cess and charges from the users on behalf of Concessioneing Authority 8.2		
25	Make timely payments to concessioneing Authority viz. Royalty & Licence fees (Clause 9.1(a) & 9.2 (b))		
26	To operate Escrow Account as per priority of payments as per clause 9.5(a)		
27	Meeting any claim/ action/ suit etc. alleging loss/ destruction of goods (Clause 7.1(a)(xiii))		
28	Inform Concessioneing Authority if any Direct or indirect change of management of concessioneaire as per clause 11.2		
29	Payment of all taxes/ duties/ levies etc., to the Government Authorities (Clause 12.1(b))		
30	Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice (Clause 12.1(c))		
31	Providing copies of insurance policies to the Port (Clause 12.1(c) (iii))		
32	Utilisation of money received under insurance policies as per terms of Agreement (Clause 12.1(c) (iv))		
33	Engagement of Management Contractor as envisaged in RFP(Clause 12.1(f))		
34	Ensuring conduct of Conditional Survey by an expert appointed by mutual consent and compliance of remedies thereof before expiry of concession period. (Clause 12.1(g))		
35	Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey [Clause 12.1 (g) ii]		
36	Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Port (Clause 15)		

Operation Stage Monitoring Report of [Name of the Project] for the month ended.....

Compliance of Obligations of the Concessioneing Authority

S.No.	Obligations of the Port (Related MCA Clause)	Whether any action required	If yes, give details of action taken
			



		(Yes/ No)	
1	To get from the concessionaire copies of "as built" design and drawings maintenance schedule of equipments etc. as reviewed by Independent Engineer as per (Appendix 6) & clause 18.2 ©		
2	Release of Performance Security after 6 months from the date of commercial operation(Clause 4.1)		
3	Scheduling entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms.- Clause 7.1 © (i) (a)		
4	Maintenance of entrance channel draft Clause 7.1(c) (i)(b) Maintenance of required draft alongside berth (Clause 7.1(c) (i) (d))		
5	Provide waterside safety and safety of navigation; - Clause 7.1 (c) (i) (c)		
6	Provision and maintenance of all general port infrastructure other than covered under the concession - Clause 7.1 (c) (i) (f)		
7	Grant approvals/ consents sought by the Concessionaire as required under the agreement Clause 7.1 (c) (ii)		
8	Evolve mutually acceptable mechanism for sharing the common costs by existing and future terminal operators Clause 7.1 (c) (i) i		
9	Provide access to all applicable infrastructure facilities and utilities including water, electricity etc. Clause 7.2		
10	Review performance standards from the monthly report submitted by concessionaire and take remedial action including recovery of liquidated damages as per Clause 7.3		
11	To operate escrow account as per priority of payments as per clause 9.5(a)		
12	Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2		
13	Assistance to concessionaire by giving recommendation letter for getting applicable permits Clause 12.2 (a)		
14	Pay levy (or) levies including increase in taxes, duties etc., on account of port assets payable to State Govt. Clause 12.2 (b)		
15	Shall not operationalise competing facility as per Clause 12.2 (c)		
16	Issue notice of Force Majeure In the event of occurrence of any Force Majeure event (Clause 14.5)		
17	Extension of time for performing obligations due		



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	to occurrence of Force majeure(Clause 14.9 (b))		
18	Compliance of provisions of Clause 14.10 in the event of force majeure continuing beyond 120 days		
19	Payment of compensation in the event of termination due to force majeure event as per clause 17.1(a) Payment of compensation in the event of termination due to concessionaire event of default as per clause 17.1(b) Payment of compensation in the event of termination due to concessioning authority event of default as per clause 17.1(c)		
20	Authorize the concessionaire to collect cesses and charges including infrastructure cess if required and remit the same to concessioning authority if required (Clause 8.2 and 8.5)		
21	Initiate action for amicably resolution of disputes (Clause 19.1 and 19.2)		
22	Any other observation, complaint or suggestion		
23	Payment of Compensation to Senior Lenders (Clause 17.4)		
24	Issue of Consultation Notice and Compliance of remedial process in case of Event of Default on the part of Concessionaire (Clause 15.3 & 15.4)		
25	Informing Senior lenders of intent of termination by issuing a copy of Termination Notice to them on occurrence of force Majeure/ Event of Default (Clause 15.7 and 16)		

Key Performance Indicators (KPI)/Performance Standards
(Based on MCA of Major Ports)

S.No.	Maintenance/ Performance Standards	Indicative norms	Actual during the month:	Shortfall, if any	Action taken to remedy shortfall
1	Gross Berth Output Appendix-15				
2	Transit Storage Dwell time Appendix 15				
3	Turn-around time for receipt/ delivery operation Appendix 15				
4	Availability of Cranes				

**Construction/ Operation Stage Monitoring Report of (Name of the Project) for
the month ended.....(Prepared by Port to the Ministry)**



[Handwritten Signature]



I. Basic Data of the project

Sl. No.	Project Parameters	Details
1.	Name of the concessionaire	
2.	Percentage of equity holding in case of consortium	
3.	Payment of Royalty	
4.	Date of Issue of Letter of acceptance by the port to concessionaire	
5.	Date of signing of Concession Agreement	
6.	Time duration for fulfilling the condition precedent as per concession agreement (a) By Concessionaire (b) By Concessioneing Authority	
7.	Actual Date of award of concession after fulfilling condition precedent	
8.	Date of starting of commercial operation	
9.	Estimated cost	
10.	Actual Cost	
11.	Capacity	
12.	Project details like length of berth, design vessel size can be handled, equipments installed, backup area etc.,	
13.	Present tariff rate	
14.	MGT if any as per concession agreement	
15.	Cargo handled during this month	
16.	Cumulative cargo handled during the financial year	
17.	Any other remarks	

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Appendix 19

Mechanization of Berth No. 14 for handling containers and other cargo at New Mangalore Port - List of Cargo indicated which shall not be handled at Berth No. 14

- 1) Rock Phosphate in bulk
- 2) Sulphate
- 3) All POL Products
- 4) All Chemicals
- 5) Edible Oil
- 6) Bauxite
- 7) Bentonite
- 8) Iron Ore in Bulk fines
- 9) Iron Ore Lumps
- 10) Manganese Ore
- 11) Perlite Ores
- 12) Chromite ore
- 13) All Types of Ores in Bulk
- 14) Fly ash
- 15) Clay
- 16) Chalk in bulk
- 17) Pet Coke in bulk
- 18) Met Coke in bulk
- 19) Cement in bulk
- 20) Mill Scale
- 21) Sulphur in bulk
- 22) Bulk shredded steel scrap
- 23) Slag



APPENDIX 20

MODEL TRIPARTITE AGREEMENT

MODEL TRIPARTITE AGREEMENT (FOR PORTS PROJECTS)

BETWEEN PROJECT AUTHORITY, CONCESSIONAIRE AND INFRASTRUCTURE
DEBT FUND

This Tripartite Agreement¹ is made at [New Delhi] on the^{*****2} day of ^{*****},
20^{**} by and between

(i) [BOARD OF TRUSTEES for[*] PORT³, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963], and having its principal administrative office at [*]

(hereinafter referred to as the "Concessioneing Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

(ii) The[*****Infrastructure Debt Fund], a company registered under the Companies Act, 1956, acting through^{*****}, and having its registered office at^{*****} (hereinafter referred to as the "Debt Fund" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

And

[***** Limited], a company registered under the Companies Act, 1956, acting through ^{*****}, duly authorised by the resolution passed at the meeting of its Board of Directors held on ^{*****},

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 administrators, successors and assigns)

WHEREAS:

(A) The Concessioneing Authority and the Concessionaire had entered into a Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annex-1, for development of ^{*****} (the "Project");



(B) The Project entered into commercial operation or any substitute thereof on*****(the "**Date of Commercial Operation**") in accordance with the provisions of the Concession Agreement;

(C) Following the occurrence of the Date of Commercial Operation, the Concessionaire has been operating the Project in accordance with the terms and conditions of the Concession Agreement;

(D) The Concessionaire had raised debt from the Senior Lenders for financing the Project and had utilised the same for the purposes of the Project under the Concession Agreement;

(E) The Concessionaire has been discharging its debt service obligations, including the repayment of principal and interest, in accordance with the provisions of the Financing Documents;

(F) The debt service obligations have not been rescheduled, waived or postponed in any manner during the past one year from the date hereof, and the Concessionaire is not in default of its debt service obligations under the Financing Documents; and

(G) The Concessionaire has decided to refinance all or part of its outstanding debt and has requested the Debt Fund to invest in its bonds, the proceeds of which shall be paid to the Senior Lenders as specified in Schedule-1.

Now, therefore, the Parties hereby agree and this agreement witnessed - as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

"Agreement" means this Tripartite Agreement, and amendments if any thereto;

"Bonds" means the securities issued by the Concessionaire in consideration of the amounts paid for the investment thereof;

"Concession Agreement" means the executed Concession Agreement dated [date on which the Concession Agreement has been signed] for the Project, entered into between the Concessioning Authority and the Concessionaire,

and shall include all Schedules thereof and any amendments thereto made in accordance with the provisions contained in this behalf therein;



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"Financing Documents" means financing documents under the Concession Agreement and documents executed on the date [...date of signing of the financing documents] for the Project and shall include all Schedules thereof and any amendments thereto made in accordance with the provisions contained in this behalf therein.

"Senior 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.

"Senior Lenders' Representative" shall have the same meaning as ascribed to it in the Financing Document, provided that, this would include the Trustees for any bonds issued by the Concessionaire. In absence of one such person/entity having the authority to sign, Senior Lenders Representative shall mean all the Senior Lenders, and/or the Trustees for any bonds issued by the Concessionaire.

"Major Ports" means a port notified by the Central Government in the Official Gazette or a port that is declared as a Major Port through the Major Ports Act, 1963⁴

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

⁴All Major Ports except Ennore Port, are regulated by their respective Port Trusts. The major port trusts are autonomous bodies managed by a board of trustees under the overall control of the Central Government through the Ministry of Shipping. All major ports are covered under the Major Port Trust Act (MPTA), 1963 except Ennore Port, which it is a limited company and registered under the Companies Act, 1956.

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

1.3 Interpretation

1.3.1 In this Agreement, unless the context otherwise requires,
(a) references to any legislation or any provision thereof, or any rules, regulations, by laws or notifications thereunder, shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to **"development"** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **"develop"** shall be construed accordingly;

(c) **"lakh"** means a hundred thousand (100,000) and **"crore"** means ten million (10,000,000);

(d) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description



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shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Debt Fund hereunder or pursuant hereto in any manner whatsoever;

(e) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

(f) the Recitals and Annexes to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement; and

(g) time shall be of the essence in the performance of the Parties' respective obligations. If anytime period specified herein is extended, such extended time shall also be of the essence.

1.3.2 Any word or expression used in this Agreement shall, be construed as per the definition given in the General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

2. ISSUE OF BONDS

2.1 The Parties agree that the Concessionaire may, in accordance with the provisions of this Agreement, issue Bonds for the amounts subscribed by the Debt Fund; provided that the total value of such Bonds shall not exceed 94% (ninety four percent) of compensation payment from the Concessioneing Authority on day of signing this Tripartite Agreement **(as specified in Schedule II)**; [provided further that the Concessionaire may, with prior written approval of the Concessioneing Authority, which approval the Concessioneing Authority may in its sole discretion deny, issue additional Bonds for a total value not exceeding the balance of the said compensation payable.

2.2 Upon investment in Bonds pursuant to Paragraph 2.1, the Debt Fund shall be deemed to be a Senior Lender and shall thereupon be entitled to all the rights and privileges of a Senior Lender under the Concession Agreement.

2.3 The tenor of the Bonds, in accordance with the provisions of this Agreement shall be such that atleast 50% (fifty percent) and 75% (seventy five per cent) of the total nominal value thereof shall be fully redeemed by the Concessionaire no later than the expiry of 75% (seventy five percent) and 85% (eighty five per cent) of the



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Concession Period respectively and the balance, if any, shall be redeemed no later than 2 (two) years prior to the expiry of the Concession Period.

2.4 Subject to the clause 2.3 of this Agreement, the tenure, rate of interest and other commercial terms of the Bonds shall be determined by mutual agreement between the Debt Fund and the Concessionaire.

2.5 The Bonds shall be in such denomination as the Debt Fund and the Concessionaire may determine, but not less than Rs [10,000 (Rupees ten thousand)] in any case.

2.6 Subject to the provisions of Paragraph 4.1, the Debt Fund and the Concessionaire may, with prior written approval of the Concessions Authority, which approval the Concessions Authority may in its sole discretion deny, allocate and bear the foreign exchange risks for and in respect of any foreign-exchange denominated Bonds, in such manner as they may mutually agree. [For the avoidance of doubt, the Parties expressly agree that if the foreign exchange risk for any or all Bonds is borne by the Concessionaire. The compensation to be made by the Concessions Authority for and in respect of such Bonds shall be adjusted to cover the variation between the nominal value of Bonds and the actual amount payable to the Debt Fund, such that the liability of the Concessionaire for redemption of the Bonds hereunder is fully discharged by the Concessions Authority.]

2.7 The Parties expressly agree and confirm that repayment of the principal and interest in respect of the Bonds shall have a prior charge over the Senior Lenders on appropriation of compensation under Article [9,16and17] of the Concession Agreement, and only the balance remaining shall be paid to the other Senior Lenders.

2.8 Any delay in the repayment of the principal or interest for and in respect of the Bonds shall attract interest at a rate of 3% (three percent) above the rate of interest applicable for the Bonds.

2.9 The Parties agree and confirm that upon execution of this Agreement, the Debt Fund shall, acting through the Senior Lenders' Representatives, be deemed to be a party to the Escrow Agreement and the Substitution Agreement for the Project, and all rights, privileges and obligations of the Senior Lenders shall also vest in the Debt Fund. The Parties further agree and confirm that the provisions of the Concession Agreement and all other agreements, including the Escrow Agreement, Substitution Agreement and Financing Documents, shall be read and construed so as to give effect to the provisions of this Agreement, but without increasing any financial obligations and/or liabilities of the Concessions Authority under the Concession Agreement.



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2.10 By counter-signing the Tripartite Agreement, the Senior Lenders' Representative, acting on behalf of the Senior Lenders agrees, confirms and undertakes that the *paripassu* rights, title or interest of the Lenders in compensation, to the extent such rights, title or interest are provided in the Concession Agreement, Substitution Agreement, Escrow Agreement, Financing Documents or any other agreement, shall be subordinate to the rights, title or interest created by the Bonds in favour of the Debt Fund, and accordingly, the compensation shall be applied first for the redemption of Bonds and only the balance remaining, if any, shall be paid into the Escrow Account for meeting other obligations⁶, including the balance Debt Due. For the avoidance of doubt, the Parties expressly agree that the Debt Fund may, in its discretion, exercise all the rights and privileges of the Senior Lenders' Representative under the Concession Agreement, Substitution Agreement, Escrow Agreement and this Agreement. The Parties further agree that save and except the application of compensation for redemption of Bonds in pursuance of this Agreement and subject to the provisions of Paragraph 2.7, the Senior Lenders shall have *paripassu* charge on the revenues of the Concessionaire in accordance with the provisions of the Concession Agreement.

⁶*It is hereby clarified that statutory dues shall have priority over the rights of all Senior lenders including the Debt Fund*

2.11 The Debt Fund may, by notice to the Parties, transfer all or any Bonds to any other person, and upon such transfer, the rights and obligations of the Debt Fund shall vest in such person. Provided that no such notice shall be required for transfer of Bonds if they have been listed in any recognized Stock Exchange and such transfer is in accordance with the regulations of the Stock Exchange.

2.12 Notwithstanding anything to the contrary contained in this Agreement, the Debt Fund may have the option to extend a term loan to the Concessionaire for an amount not exceeding 50% (fifty percent) of its total exposure to the Concessionaire and the provisions of this Agreement shall apply *mutatis mutandis* to such term loan as if it were a Bond.

3. REDEMPTION OF BONDS

3.1 The Concessionaire agrees and undertakes that upon completion of the tenor of the Bonds, it shall redeem the same by making full and complete payment of the outstanding principle and the interest thereon.



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3.2 Notwithstanding anything to the contrary in this Agreement, the Debt Fund may by notice require the Concessionaire to redeem upto 10% (ten per cent) of the value of the Bonds in any financial year and upon notice in this behalf, the Concessionaire shall redeem such Bonds no later than 120 (one hundred and twenty) days from the date of receipt of such notice.

3.3 The Parties expressly agree that the Debt Fund and the Concessionaire may at any time by mutual agreement undertake early redemption of the Bonds and upon full redemption thereof, this Agreement shall cease to be in force.

3.4 The Parties expressly agree and confirm that in terms of Article [15, 16 and 17] of the Concession Agreement, the Concessions Authority has covenanted that in the event of termination of the Concession Agreement, the Concessions Authority shall pay compensation in accordance with the provisions of the Concession Agreement, which shall be applied for redemption of the Bonds in accordance with the provisions of this Agreement. The Parties further agree and confirm that upon termination on account of a Concessionaire Event of Default or Concessions Authority Event of Default, the Concessions Authority shall pay compensation in accordance with the provisions of the Concession Agreement.

3.5 The Parties agree and confirm that in the event of default in Debt Service by the Concessionaire, the Senior Lenders shall have the right to enforce termination of the Concession Agreement in terms of Clause [15.1(a)(xi)] and [17] of the Concession Agreement, which *inter alia* requires the Concessions Authority to pay compensation in accordance with the provisions of the Concession Agreement. [The Parties further agree that in the event the Concessions Authority approves the issuance of additional Bonds under the provisions of Paragraph 2.1 of this Agreement, the liability of the Concessions Authority shall, notwithstanding the provisions of the Concession Agreement, extend to an amount equal to 100% of the compensation in Concessionaire Event of Default.

3.6 The Concessions Authority agrees and undertakes that upon receipt of a notice under and in accordance with the provisions of Clause [3.2] of the Substitution Agreement, it shall, no later than 15 (fifteen) days from the date of receipt of such notice, issue a notice to the Concessionaire requiring it to cure the Financial Default and in the event the default is not cured before the expiry of the Remedial Period specified in Clause [15.4] of the Concession Agreement, a Concessionaire Default shall have occurred and the Concessions Authority shall issue the Termination Notice forthwith, but no later than 15 (fifteen) days from the date of occurrence of Concessionaire Default, and shall make compensation no later than 15 (fifteen) days from the date of Termination Notice. The Parties expressly agree that the timelines



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specified in the Paragraph 3.6 of this Agreement are not in modification of the Concession Agreement but only in elaboration thereof.

3.7 The Parties expressly agree and confirm that the rights of the Debt Fund and the Senior Lenders' Representative to enforce termination of the Concession Agreement in accordance with Paragraph 3.6 may be exercised individually or jointly, as the case may be, by the Debt Fund and/or the Senior Lenders' Representative.

3.8 The Parties expressly agree that the Concessions Authority shall, instead of depositing the compensation in the Escrow Account of the Project, redeem the Bonds by making payments due and payable to the Debt Fund, and the balance, if any, shall be paid into the Escrow Account. The Parties further agree that the provisions hereof shall in no way be construed to increase the financial liability of the Concessions Authority for and in respect of the compensation [save and except as provided in Paragraph 3.5 for and in respect of the additional bonds specified therein].

3.9 The Parties agree and confirm that the amounts, if any, paid by the Concessions Authority for redemption of Bonds and the balance compensation, if any, paid as per the Concession Agreement into the Escrow Account shall be deemed to be a valid discharge of its obligations to make compensation under and in accordance with the Concession Agreement.

4. FEES

4.1 The Debt Fund shall pay to the Concessions Authority, 0.05%⁷ (zero point zero five per cent) per annum of the outstanding debt financed by the IDF, by way of a guarantee fee in consideration of the obligations of the Concessions Authority hereunder; [provided that the guarantee fee shall be 1% (one percent) in respect of Bonds for which the foreign exchange risk is to be borne by the Concessionaire] [provided further that the guarantee fee for and in respect of the additional Bonds specified in Paragraph 2.1 shall be 3% (three per cent) per annum of the nominal value thereof].

⁷This fee percentage shall be reviewed after three years or earlier, if required, by the IMG under Secretary (EA) as approved by the Cabinet.

4.2 The guarantee fee specified in Paragraph 4.1 shall be due and payable annually before commencement of the financial year to which it relates. In the event of delay in payment of the guarantee fee, the Debt Fund shall pay interest at 10 Year Gsec plus 6% (Six Percent) per annum, to be computed on a daily basis and compounded every month for the period of delay; provided, however, that if such delay exceeds the period of 180 (one hundred and eighty) days this Agreement shall



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cease to be in force, and upon termination of the Concession Agreement at any time thereafter, the Concessions Authority's obligation to pay the compensation to the Debt Fund shall be deemed to be reduced by 20% (twenty percent) thereof.

5. REPRESENTATIONS AND WARRANTIES

5.1 Each of the Parties represent, warrant and confirm the following:

(a) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;

(b) the execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of any Party or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;

(c) all information provided by the Party is true and accurate in all material respect;

(d) there are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in a material breach of this Agreement;

(e) the Party has complied with all Applicable Laws and Applicable Permits in all material respects;

(f) the Concessionaire is not in a material breach of the Concession Agreement or of any Project Contracts or Financing Documents; and

(g) no representation or warranty contained herein or in the Concession Agreement or any other document furnished by the Party contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

5.2 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties here to about



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the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

6. ARBITRATION

6.1 Any Dispute which is not resolved amicably by conciliation shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Paragraph 6.2 of this Agreement. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

6.2 In the event of a dispute between two Parties, there shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules. In the event of a dispute involving all the Parties, a single arbitrator shall be appointed in accordance with the Rules.

6.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Paragraph 6 shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay.

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

6.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

7. COMING INTO FORCE AND DURATION OF THE AGREEMENT

This Agreement shall come into force and effect on the date hereof and shall remain in force until the redemption of all Bonds.

IN WITNESS WHEREOF, this Agreement has been executed on the ~~10th~~ day and year first above written.



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For and on behalf of the Concessions **Authority**

Signature: Name : Designation :

For and on behalf of the **Debt Fund**

Signature: Name : Designation :

For and on behalf of the **Concessionaire**

Signature: Name :

Designation :

Agreed, Accepted, Countersigned and Witnessed by the Senior Lenders' Representatives for and on behalf of **Senior Lenders** by

Signature: Name : Designation :







SCHEDULE-I*(Refer Recital G)*

No.	Name of Senior Lenders/Bond holders' Trustee with Address	Amount to be refinanced IDF by way of Bonds/Loan (Rs.in crore)	Remarks, if any
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

SCHEDULE-II*(Quantum of compensation)*

As per the definition in the Concession Agreement, the quantum of (i) Book Value, (ii) 90% of Debt Due and (iii) Total Project Cost as on the date of execution of this Agreement, and at the end of each financial year until the end of the concession period is mentioned in the table below:

(Rs. in Crores)

Date	Book Value ⁹	90% of Debt Due	Total Project Cost	Amount of Compensation ⁸

⁸ On Termination due to Concessionaire Event of Default after the Date of Commercial Operation, the compensation payable by the Concessioneing Authority (asper 17.1 (b) of the Model Concession Agreement for Private Sector Projects in Major Ports), shall be the lowest of (i) [Book Value (ii) 90% of Debt Due and (iii) the Total Project Cost)



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APPENDIX-21

Arbitration Rules of the Society for Affordable Redressal of Disputes-Ports (SAROD-Ports)

ARBITRATION RULES OF SAROD-PORTS

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1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
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6. Filing of Case Statements
7. Contents of Case Statements
8. Default in Filing and Serving Case Statements
9. Further Written Statements
10. SAROD-PORTS- Ports to Provide Assistance
11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
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14. Independence and Impartiality of the Tribunal
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24. Language of Arbitration
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PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes-Ports (SAROD-PORTS- Ports) has been formed as a Society under Societies Registration Act, 1860 with registration It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS

RULES

SAROD-PORTS ARBITRATION

Rule: 1- Scope of Application

1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes-Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.

1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-PORTS.

Rule: 2 - Definitions

2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".

2.2 In these Rules:

"Act" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

"DOMESTIC ARBITRATION" means arbitration to be conducted under these rules.

"SAROD-PORTS" means the Society for Affordable Redressal of Disputes-Ports.

"SAROD-PORTS Arbitrator Panel" means the list of persons admitted to serve as arbitrators under these Rules.

"IPA" means Indian Ports Association

"IPPTA" means Indian Private Ports and Terminals Association

"GOVERNING BODY" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"SECRETARY" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.



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"**TRIBUNAL**" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

"**PARTY**" means a party to an arbitration agreement,

"**E-Arbitration**" means submission of pleadings, defence statement etc. by E-mail and holding of proceedings via videoconferencing.

Rule 3 - Notice, Calculation of periods of Time

3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.

3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4 - Commencement of Arbitration

4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party ("the Respondent"), a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:

- a. a request that the dispute be referred to arbitration;
- b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e. a brief statement describing the nature, **facts** and circumstances **leading to** the dispute;
- f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice of Arbitration is filed;
- g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h. the name of the Claimant's nominated arbitrator.



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4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within **14 (fourteen)** days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a. A confirmation or denial of all or part of the claims;
- b. Brief statement of the nature and circumstances of any envisaged counter claims
- c. A comment in response to any proposals contained in the Notice of Arbitration; and
- d. The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule6 – Filing of Case Statements

6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.

6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counter claim (if any) alongwith all documents to be relied upon by the Respondent.

6.3 Within 30 days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counter claim.



6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule.

6.6 The party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 - Contents of Case Statements

7.1 The case statements must contain the detailed particulars of the party's claim, defence or counter claim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

7.2 It must:

- a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
- b. State fully its reasons for denying any allegation or statement of the other party.
- c. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD-PORTS to Provide Assistance

10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.



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Rule 11 – Appointment of Tribunal

11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs.3 Crores or less.

11.2 In all cases of disputes claimed for more than Rs.3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD-PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counter claim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,

11.4 An Arbitrator/ Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,

11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12 – Multi party appointment of the Tribunal

12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

12.2 If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13 – Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 – Independence and Impartiality of the Tribunal

14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.

14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/or to all parties.

Rule 15 – Code of Ethics for Arbitrators



Subs



An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

Disclosure

15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to **his** impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances, **in terms of the arbitration and conciliation Act 1996 as amended from time to time.**

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
- (b) The extent of any prior knowledge he may have of the dispute.

Bias

15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.8 No arbitrator shall **Communicate** with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.9 Throughout the arbitral proceedings, an arbitrator shall not have any unilateral communications regarding the case with any party, or its representative.

Fees



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15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

Conduct

15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint **himself** with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at anytime, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16 – Challenge of Arbitrators

16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct

16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,

16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

16.6 The Notice of Challenge must state the reasons for the challenge.

16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.



- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 – Removal of the Tribunal

- 18.1 The Governing Body may on the application of a party remove an arbitrator:
- Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
 - Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
 - Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.
- 18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.
- 18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.
- 18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. [neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.

20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.



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20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 – Fees of SAROD-PORTS and Arbitral Tribunal

Fee Schedule

Reaistration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22 - Transmission of File to the Tribunal

22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a time table for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23 – Judicial Seat of Arbitration

23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 – Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 – Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10 AM to 5 PM with a recess of one hour.

Rule 26 – Communication between Parties and the Tribunal

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or ail other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.



26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at anytime notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 – Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 – Hearings

28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with **or** without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 – Documents Only Arbitration

29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.

29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.

29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 – Witnesses



30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation

30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31 – Experts Appointed by the Tribunal

31.1 Unless otherwise agreed by the parties, the Tribunal may:

- a. appoint one or more experts to report the Tribunal on specific issues;
- b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.

31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 – Rules applicable to substance of dispute-(1) Where the place of arbitration is situated in India


32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 – Closure of Hearing

33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.

33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 – Additional Powers of the Tribunal



34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-

- a. Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
- b. Extend or abbreviate any time limits provided by these Rules;
- c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- d. Order the parties to make any property or thing available for inspection
- e. Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
- f. Make orders or give directions to any party for interrogatories;
- g. Make orders or give directions to any party for an interim injunction or any other interim measure;
- h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35 – Deposits to Costs and Expenses

35.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

35.2 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counter claim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

35.3 Where the amount of the claim or the counter claim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of

35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.



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35.5 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.

35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counter claims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counter claims by any party who has complied with orders

35.7 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 – Decision Making by the Tribunal

36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.

36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

Rule 37 – The Award

37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,

37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.

37.4 The Tribunal may make interim awards or separate awards on different issues at different times.

37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.

37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.



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Rule 38 – Additional Award

38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 – Correction of Awards

39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

Rule 40 – Settlement

40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

40.2 The Parties shall:

a. Notify the **Tribunal** and the Secretary immediately if the arbitration is settled or otherwise terminated;

b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.

40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41-Interest



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The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of State Bank of India in respect of such period ending not later than the date of the award as the Tribunal considers just.

Rule 42- Costs

42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

42.2 In this Rule, "costs of the arbitration" shall include:

- a. The fees and expenses of the Tribunal and the administration fees of the SAROD- PORTS as determined by the Secretary in accordance with the Schedule of Fees;
- b. The costs of tribunal appointed experts or of other assistance rendered; and
- c. All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc) of one party shall be paid by the other party.

Rule 43 – Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

Rule 44 – Exclusion of Liability

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal proceedings arising out of the arbitration.



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Rule 45 - General Provisions

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46 - Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD-PORTS.



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31/5/19

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31/5/19

APPENDIX-I
Letter comprising the Bid
(Refer Clauses 2.1.5 and 2.14)

Dated: 31st May, 2019

To,
The Chief Engineer (Civil)
New Mangalore Port Trust
Panambur, Mangalore - 575010

Dear Sir,

Sub: Bid for "Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT-BASIS at New Mangalore Port Trust" - Reg

With reference to your RFP document dated 20th February 2019¹, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

- 1 I/ 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 I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
- 4 I/ 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 I/ We certify that in the last three years, ~~we/ any of the Consortium Members² 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.

¹All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to each Applicant.

²If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

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- 6 I/ We declare that:
- a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - b. I/ 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. I/ 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. I/ 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 I/we shall continue to abide by them.
- 7 I/ 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 I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
- 9 I/ 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 I/ 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 I/ 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 I/ 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 I/We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-VIII thereof.
- 14 I/ 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 I/ We acknowledge and undertake that I/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 2 (two) 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 percent) of the Total Project Cost specified in the Concession Agreement. 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 I/ 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. I/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. I/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 I/ 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 I/ 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 my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/ 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 I/ 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 I/ We offer a Bid Security of Rs. 3,31,24,000/- (Rupees Three Crores Thirty One Lakhs and Twenty Four thousand only) to the Authority in accordance with the RFP Document.
- 22 The Bid Security in the form of a Demand-Draft/ 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 I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project/Concession is not awarded to me/us or our Bid is not opened or rejected.

- 25 The Royalty has been quoted by me/ 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 I/ 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 I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
- 29 I/ We hereby submit our Bid and offer a "Royalty on

- (i) For Containers at Rs. 951/- (in figures and words)
Nine Hundred Fifty One Only
..... per TEU and
- (ii) ~~For Other Clean Cargo (viz., dolomite, limestone, fertilizer and gypsum) at Rs. (in figures and words)..... per MT~~

handled which would be indexed as per the indexation factor notified by TAMP as share of the Authority for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

For JSW Infrastructure Limited



Name: Devki Nandan

Designation: Sr. Vice President,
Business Development and M&A



Date: 31st May, 2019

Place: Mumbai

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

The Royalty shall be mentioned clearly in figures as well as in words.

Regd. Office : JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
CIN : U45200MH2006PLC161268
Phone : +91 22 4286 1000
Fax : +91 22 4286 3000
Website : www.jsw.in

Date: 3rd June, 2019

To,
The Chief Engineer (Civil) *6/6/19.*
New Mangalore Port Trust
Panambur, Mangalore - 575010

Dear Sir,

Sub: "Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port Trust" – **Reg**

Ref: Your letter ref no. 26/14/RFQ-B-14/CE(C)/2018-19/TS dated 3rd June, 2019

With reference to above mentioned letter, please consider para 5 of Appendix – I (Letter comprising the Bid) as under:

5. I/ We certify that in the last three years, we or our 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.

You are requested to consider the same.

Yours faithfully,
For JSW Infrastructure Limited



Name: Devki Nandan
Designation: Sr. Vice President,
Business Development and M&A





Office of the General Manager
 174
 05 SEP 2019
 New Mangalore Port Trust, P.
 Mangalore - 575001

ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ
 नव मंगलूर पत्तन न्यास

NEW MANGALORE PORT TRUST

Govt. of India (Ministry of Shipping)

Panambur / ಮಂಗಳೂರು ಮಂಗಲೂರ Mangalore - 575010.

EE(C)
 31/8/19



SAGARMALA
 PORT-LED PROSPERITY

26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS

Date: 26/08/2019

To,

M/s. JSW Infrastructure Limited,
 JSW Center, Bandra Kurla Complex,
 Bandra (East), Mumbai-400051
devki.nandan@jsw.in
 FAX: 022 4286 3000

(Kind Attention : Shri. Devki Nandan, Sr. Vice president (Business Development)

Sir,

Sub: Letter of Award (LoA) for Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT Basis at New Mangalore Port Trust - Reg.

Ref: (i) RFP Letter No. 26/14/RFP/B.14/CE(C)/2018-19/TS, dated 20.02.2019.

(ii) Your offer dated 31.05.2019

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 Rs. 951/- (Nine Hundred Fifty one) per TEU of container handled 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, the Applicant shall set up a Special Purpose Vehicle (SPV) duly 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.

EE(C)
 31/8/19



Accepted
 Nandan
 28/08/2019

ದೂರವಾರ್ತೆ : ಕಛೇರಿ : 0824 - 2407341
 ಫ್ಯಾಕ್ಸ್ : 0824 - 2408390

ಫೋನ್ : ಕಾರ್ಯಾಲಯ : 0824 - 2407341
 ಫೆಕ್ಸ್ : 0824 - 2408390

Phone : Office : 2407341 (18 Lines)
 Fax : 0824-2408390

An ISO 9001:2015, 14001:2015 & ISPS Compliant Port

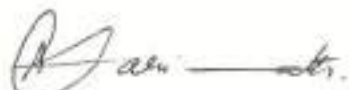
224

342/342(EE)
 24/08/19

- 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.
- 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,


Chief Engineer (Civil)(i/c)



Accepted
W. K. Kulkarni
28/08/2019

Regd. Office : JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
CIN : U45200MH2006PLC161268
Phone : +91 22 4286 1000
Fax : +91 22 4286 3000
Website : www.jsw.in

August 28, 2019

To,
The Chief Engineer (Civil)
New Mangalore Port Trust
Panambur, Mangalore - 575010

Sub: Letter of Award (LOA) for Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port Trust ("NMPT") – **Reg**

Ref: Your letter ref no. 26/14/RFP-SFC-DCA/B.14/CE@/2019-20/TS – Dated 26/08/2019

Dear Sir,

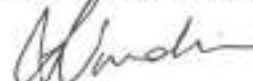
With reference to the above referred subject, wherein as per the LOA, the bidder – JSW Infrastructure Limited ("Company") is required to set up an SPV, incorporated under the Companies Act, 1956/2013, and submission of the constitutional document to NMPT, prior to the execution of the concession agreement (CA).

With regards to the same, email dated August 28, 2019 has been sent, requesting to consider an existing 100%- subsidiary (JSW Terminal (Mormugao) Pvt. Ltd.) of the Company, instead of fresh incorporated –SPV company, as the SPV for the execution of the CA. The request to accept the existing subsidiary, is due to the recent amendment in the Companies Act, 2013 (Act), wherein there is restriction on having multiple layers of subsidiary. The Company has already initiated merger procedure (holding & subsidiaries) to be in compliant with the Act. Thus the Company is restricted to incorporate new SPV subsidiary, until merger order is received.

We hereby also abide to amend/alter the constitutional documents of the existing subsidiary company to be in line with conditions of RFP document and also with any requirement advised by NMPT.

Request to consider the same and revert. Thanking you in anticipation and your prompt response in highly appreciable.

Yours faithfully,
For JSW Infrastructure Limited



Name: Devki Nandan
Designation: Sr. Vice President,
Business Development and M&A



Encl: i) MCA notification dated September 20, 2017 (on restriction on layers of subsidiary)
ii) Shareholding pattern & Constitutional documents of JSW Terminal (Mormugao) Pvt. Ltd.



ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ

नव मंगलूर पत्तन न्यास

NEW MANGALORE PORT TRUST

Govt. of India (Ministry of Shipping)

ಪಂಚಾಯತು ಪನ್ಬುರ Panambur / ಮಂಗಳೂರು ಮಂಗಲೂರ Mangalore - 575010.



SAGARMALA
PORT-LED PROSPERITY

26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS

Date: 09.09.2019

To,

M/s. JSW Infrastructure Limited,
JSW Center, Bandra Kurla Complex,
Bandra (East), Mumbai-400051

FAX: 022 4286 3000

(Kind Attention: Shri. Devki Nandan, Sr. Vice president (Business Development))

Sir,

Sub: Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT Basis at New Mangalore Port Trust - Reg.

Ref: Your letter dtd. 28.08.2019.

With reference to the above, it is to state that your request for considering the existing 100% subsidiary company viz., JSW Terminal (Mormugao) Pvt. Ltd. instead of fresh incorporated SPV Company by amendment / alteration of the Constitutional documents of the existing subsidiary company would be considered subject to the following conditions.

1. The name of the subsidiary company should be changed to the effect that it should show the relation with Mangalore and submit fresh Incorporation Certificate after change of name.
2. The objective of the subsidiary company as mentioned in the Memorandum of Association and Article of Association should incorporate that they will carry out the work exclusively for the Concession Agreement to be entered into with NMPT.

....2/-

ದೂರವಾರ್ತೆ : ಕಚೇರಿ : 0824 - 2407341

ಫ್ಯಾಕ್ಸ್ : 0824- 2408390

ಫೋನ್ : ಕಾರ್ಯಾಲಯ : 0824 - 2407341

ಫೇಕ್ಸ್ : 0824 - 2408390

Phone : Office : 2407341 (18 Lines)

Fax : 0824-2408390

:: 2::

3. The objective of Memorandum of Association and Article of Association should also incorporate to the effect that the subsidiary company shall have power to execute the work as per the Concession Agreement.
4. The registered office of the Company should be situated in Mangalore.
5. You are requested to submit an undertaking stating that the subsidiary company will act as SPV exclusively for the execution of the Concession Agreement to be entered into with NMPT.
6. You are also requested to furnish an undertaking to the effect that you will indemnify NMPT from all the losses, damages if any, suffered or occurred by NMPT from accepting existing subsidiary as a SPV instead of fresh incorporation of the SPV.

In view of the above, you are requested to submit the SPV documents accordingly.

Thanking you

Yours faithfully,

cc

Bala 9/09/2019

(Paritosh Bala)

Chief Engineer (Civil)

8/9/19

Received
DIP Puri
09/09/2019



Office of the Chief Engineer (Civil)
 215
 19 Oct 2019
 New Mangalore
 Mangalore

Regd. Office : JSW Centre,
 Bandra Kurla Complex,
 Bandra (East), Mumbai - 400 051
 CIN. : U45200MH2006PLC161268
 Phone : +91 22 4286 1000
 Fax : +91 22 4286 3000
 Website : www.jsw.in

September 11, 2019

To,
 The Chief Engineer (Civil)
 New Mangalore Port Trust
 Panambur, Mangalore - 575010

Sub: Letter of Award (LOA) for Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port Trust ("NMPT") – Reg

Ref: 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS - Dated 09.09.2019;
 Your letter ref no. 26/14/RFP-SFC-DCA/B.14/CE@/2019-20/TS – Dated 26/08/2019.

Dear Sir,

Referring to your letter dated 09.09.2019, we would like to thank you for considering existing 100% subsidiary of the Company (JSW Terminal (Mormugao) Pvt. Ltd. – JSW Terminal)) instead of fresh incorporation of SPV for the execution of the Concession Agreement.

We would like to bring to your kind notice about condition no. 4. of the Letter dated 09.09.2019, which requires that the Registered Office of the Company should be situated in Mangalore. We would like to inform you that at present the JSW Mormugao Terminal registered office is at Goa, which is under jurisdiction of Registrar of Companies, Goa, Daman & Diu. The Change in the registered office to Mangalore require shifting of Registrar of Companies, Goa to Registrar of Companies, Karnataka (transfer from one state to another) which is a lengthy and time consuming process of many months.

So, we request you to consider the Corporate Office of the SPV at Mangalore instead of Registered office, as the Company has full-fledged office at Goa which will also be assisting in this project. We undertake that a Corporate Office will be opened at Mangalore for operational purposes, which will be used for all correspondences/communication purposes.

Additionally, we would like to inform you that we are following similar approach for the PPP project SPVs at other Port Trusts also, whereby we are maintaining Registered Office of such SPVs at our head office in Mumbai and Corporate Office of SPVs at the site locations for all correspondences and operational purpose, and same was agreeable to the other port trusts for signing of Concession Agreement. Please see attached document for our SPVs at Paradip Port Trust for your reference.

Considering the technicality in shifting of the registered office, kindly waive the condition no. 4 and consider Corporate Office instead of Registered Office at Mangalore.

Thanking you in anticipation and your prompt response in highly appreciable

Yours faithfully,
 For JSW Infrastructure Limited

Devki Nandan

Name: Devki Nandan
 Designation: Sr. Vice President
 Business Development and M&A

HEEDS
HEED
 pl put up
19/9/19

12/10/19
12/10/19
12/10/19

Enclosed: 1) Certificate of Incorporation



JINDAL Part of O. P. Jindal Group

17/9/19
 My CE (C)
 Please arrange to put up with note sheet to seek view of law officer
10/10/19 229



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Central Registration Centre

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 the Companies (Incorporation) Rules, 2014]

I hereby certify that PARADIP EAST QUAY COAL TERMINAL PRIVATE LIMITED is incorporated on this Nineteenth day of April two thousand sixteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U74999MH2016PTC280001.

Given under my hand at Manesar this Nineteenth day of April Two thousand sixteen .



SHASHI RAJ DARA

Central Registration Centre
For and on behalf of the Jurisdictional Registrar of Companies

Mailing Address as per record available in Registrar of Companies office:

PARADIP EAST QUAY COAL TERMINAL PRIVATE LIMITED
Jindal Mansion, 5A, Dr G Deshmukh Marg., Mumbai, Mumbai City,
Maharashtra, India, 400026





GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Mumbai
Everest , 100 , Marine Drive

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that JSW Paradip Terminal Private Limited is incorporated on this Ninth day of March Two Thousand Fifteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U74999MH2015PTC262561.

Given under my hand at Mumbai this Ninth day of March Two Thousand Fifteen.

Validity unknown
Digitally signed by
Arya Jayant Pyarelal
DN: cn=Arya Jayant Pyarelal, o=Registrar of Companies, Maharashtra

Arya Jayant Pyarelal
Assistant Registrar of Companies
Maharashtra

Mailing Address as per record available in Registrar of Companies office:

JSW Paradip Terminal Private Limited
5A Jindal Mansion, Dr G Deshmukh Marg,
Mumbai - 400026,
Maharashtra, INDIA





To,
The Chief Engineer (Civil)
New Mangalore Port Trust, Panambur, Mangalore - 575010

27/9/19

etc

AECC
AECC

pl. put up
27/9/19

Sub: Letter of Award (LOA) for Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port Trust ("NMPT") – Reg
Ref: 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS - Dated 09.09.2019;
Your letter ref no. 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS – Dated 26/08/2019.

Dear Sir,
With reference to the conditions laid down vide your letter 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS - dated 09.09.2019), in response to our request for considering existing 100%- subsidiary of the Company (JSW Terminal (Mormugao) Pvt. Ltd. – JSW Terminal)) instead of fresh incorporation, as the SPV for the execution of the Concession Agreement, We hereby state that: -

- A. For Condition No 1 – Change in Name of the subsidiary to show relation with Mangalore Terminal.**
JSW Terminal has already initiated procedure to change its name to – "JSW Mangalore Container Terminal Private Limited" (Name availability letter attached by Ministry of Corporate Affairs). Forms have also been uploaded with the Ministry of Corporate Affairs (awaiting for its approval).
- B. For Condition No. 2&3 – Objective of subsidiary that work exclusively for Concession Agreement (CA) to be entered into with NMPT & shall have power to execute work as per CA.**
JSW Terminal has already initiated procedure to change its object clause to be in consonance with the CA to be entered with NMPT including the power to execute work as per CA. Forms have also been uploaded with the Ministry of Corporate Affairs awaiting for its approval.
- C. For Condition No. 4. Registered office**

Communicated vide our letter dated September 10, 2019 that Corporate office with be opened at Mangalore.
- D. For Condition No. 5 & 6. - Undertaking Stating Subsidiary Company will act as SPV exclusively for the execution of CA to be entered with NMPT. The Company will indemnify form all losses, damages, if any, suffered or occurred by NMPT for accepting the subsidiary as SPV instead of fresh incorporation.**

Undertaking will be issued after name change is effected.

With reference to point No. b of LOA for execution of CA within 30 days from the date of issue of LOA (26.08.2019), as intimated above the procedural work is in progress, hence we request to consider an extension period for signing the CA by October 31, 2019. Request to also send the draft concession agreement for our review.

We will be submitting certificate of incorporation with name change of JSW Terminal; Altered Memorandum of Association/Articles of Association of JSW Terminal & Details of corporate office at Mangalore with supporting documents/agreement, in due course.

Thanking you,
Yours sincerely,
For JSW Infrastructure Limited



Devki Nandan
Sr. Vice President, Business Development and M&A

463/24/CE(C)
26/9/19
1612/CE(C)
24/9/19
263/CE(C)
20/9/19

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES
Central Registration Centre**

Indian Institute of Corporate Affairs (IICA), Plot no. 6,7,8, Sector 5, IMT Manesar, Gurgaon, Haryana, India, 122050

Dated: 16-09-2019

To,

JSW TERMINAL (MORMUGAO) PRIVATE LIMITED

1ST FLOOR, PORT USERS COMPLEX,, MORMUGAO HARBOUR, MORMUGAO, South Goa, Goa, India,
403803

Subject: Company's name change- JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED -
Availability of name under Section 4(5) of the Companies Act, 2013.

Sir/Madam

1. With reference to your application dated 13-09-2019 (SRN H89378806).It is informed that there is no objection in the availability of the changed name JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED from the existing name JSW TERMINAL (MORMUGAO) PRIVATE LIMITED to your company.

2. Still it must be taken care that the proposed name cannot be made available for a period exceeding 60 days from the date of approval and this approval does not grant any kind of right of privilege. The name is liable to be withdrawn at any time before approval of the name change, if it is found later on that the name ought not to have been allowed.

3. It is allowed subject to the compliance of Section 4(2), 4(3) and other applicable provisions of the Companies Act, 2013.

DS MINISTRY
OF CORPORATE
AFFAIRS 27

Yours sincerely,

SATYA PARKASH KUMAR
REGISTRAR OF COMPANIES

Registrar of Companies

Central Registration Centre, Ministry of Corporate Affairs

Note: The corresponding form has been approved by SATYA PARKASH KUMAR , REGISTRAR OF COMPANIES and this letter has been digitally signed by the Registrar through a system generated digital signature under rule 9(2) of the Companies (Registration Offices and Fees) Rules, 2014.



FORM NO. MGT-14

[Pursuant to section 94(1), 117(1) of The Companies Act, 2013 and section 192 of The Companies Act, 1956 and rules made thereunder]



Filing of Resolutions and agreements to the Registrar

Form Language English Hindi

Refer the instruction kit for filing the form.

1. (a)*Corporate Identity Number (CIN) of the company

(b) Global Location Number (GLN) of the company

2. (a) Name of Company

(b) Address of the registered office of the company

(c)*e-mail id of the company

3.* Registration of Resolution(s) Agreement Postal ballot resolution(s) under Section 110
 Proposed resolution under section 94(1)

4. Date of dispatch of notice for passing of

(a) Resolution(s) (DDMM/YYYY)

(b) Postal ballot resolution(s) (DDMM/YYYY)

5. Date of passing of

(a) Resolution(s) (DDMM/YYYY)

(b) Postal ballot resolution(s) (DDMM/YYYY)

6. Number of resolution(s) for which the form is being filed

Details of the resolution

(a) (i) Section of the Companies Act, 2013 under which passed

(ii) Section of the Companies Act, 1956 under which passed

(b) Purpose of passing the resolution

(c) Subject matter of the resolution

(d) Mention whether resolution passed by postal ballot Yes No

(e) Indicate the authority passing or agreeing to the resolution
 Board of directors Shareholders Class of shareholders Creditors

(f) Whether ordinary or special resolution or with requisite majority
 Ordinary resolution Special resolution Requisite majority

II

(a) (i) Section of the Companies Act, 2013 under which passed

(ii) Section of the Companies Act, 1956 under which passed

(b) Purpose of passing the resolution

(c) Subject matter of the resolution

(d) Mention whether resolution passed by postal ballot Yes No

(e) Indicate the authority passing or agreeing to the resolution

Board of directors Shareholders Class of shareholders Creditors

(f) Whether ordinary or special resolution or with requisite majority

Ordinary resolution Special resolution Requisite majority

III

(a) (i) Section of the Companies Act, 2013 under which passed

(ii) Section of the Companies Act, 1956 under which passed

(b) Purpose of passing the resolution

(c) Subject matter of the resolution

(d) Mention whether resolution passed by postal ballot Yes No

(e) Indicate the authority passing or agreeing to the resolution

Board of directors Shareholders Class of shareholders Creditors

(f) Whether ordinary or special resolution or with requisite majority

Ordinary resolution Special resolution Requisite majority

7.(a) In case of alteration in object clause, whether there is any change in the industrial activity of the company Yes No

Form NO.INC-24



Application for approval of Central Government
for change of name

[Pursuant to section 13(2) of The Companies
Act, 2013 and Rule 29(2) of The Companies
(Incorporation) Rules 2014]

Form Language English Hindi

Refer the instruction kit for filing the form.

1. * (a) Corporate identity number (CIN) of company

(b) Global Location Number of the company

2. (a) Name of the Company

(b) Address of the registered office of the company

(c) email ID of the company

3. * (a) Service Request Number (SRN) of **RUN**

(b) Proposed name of the company

4. * Reason(s) for change of name

The Company is engaged in the business of Port Services. The Company is planning to develop, operate and maintain Container Terminal and clean cargo on DBFOT (Design, Build, Finance, Operate and Transfer) Basis under Public Private Partnership Model (PPP) at New Mangalore ("Project"). The Company has received an in-principle approval from New Mangalore Port Trust(NMPT) to be a Special Purpose Vehicle (SPV) for the Project. Hence proposal is made to change the Company's name from "JSW Terminal (Mormugao) Private

5. * Particulars of filing Form No. MGT-14 with Registrar of Companies (RoC)

(a) SRN of Form No. MGT-14

(b) Date of passing the special resolution

(c) Date of filing Form No. MGT-14

6. Name of the company at the time of incorporation (to be displayed in the certificate)

7. (a) Number of members present at the meeting where the special resolution was passed for change of name and number of shares held by them

(i) * Number of members

(ii) Number of shares held by them

(b) Number of members who voted in favour of change of name and number of shares held by them

(i) * Number of members

(ii) Number of shares held by them

(c) Number of members who voted against the change of name and number of shares held by them

(i) * Number of members

(ii) Number of shares held by them

(d) Details of members who abstained from voting and number of shares held by them

(i) * Number of members

(ii) Number of shares held by them

Attachments

1. *Minutes of the members' meeting

Attach

2. Optional attachment(s) (if any)

Attach

List of Attachments

EGM Minutes.pdf
NOC_ROC_JSW Mangalore Cont Term Pvt

Remove attachment

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete and company has obtained all the mandatory approvals from the concerned authorities and departments in respect of change of name of the company.

I have been authorised by the Board of directors' resolution number * dated

* (DDMM/YYYY) to sign and submit this application.

* To be digitally signed by

RASHMI
RANJAN PATRA
Digitally signed by RASHMI
RANJAN PATRA
Date: 2015.04.27 14:08:00
+05'30'

* Designation

* Director identification number of the director, or
DIN or PAN of the manager or CEO or CFO, or
Membership number of company secretary

Note: Attention is drawn to provisions of Section 448 and 449 of the Companies Act, 2013 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

Modify

Check Form

Prescrutiny

Submit

For office use only:

eForm Service request number(SRN) eForm filing date (DDMM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Confirm submission

Date of signing

(DDMM/YYYY)

Page 2 of 2

Declaration

I am authorized by the Board of Directors of the Company vide resolution no. Dated (DD/MM/YYYY) to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
2. All the required attachments have been completely and legibly attached to this form. It is also certified that copy of the resolution(s) or agreement(s) filed herewith is or are a true copy(s) of the original.
3. Any application, writ petition or suit had not been filed regarding the matter in respect of which this petition/application has been made, before any court of law or any other authority or any other Bench or the Board and not any such application, writ petition or suit is pending before any of them.

* To be digitally signed by



* Designation

Name of liquidator

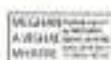
* Director identification number of the director; or Income-tax PAN of the liquidator; DIN or Income-tax PAN of manager or CEO or CFO; or membership number of Company secretary;

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form, it is here by certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form, and found them to be true, correct and complete and no information material to this form has been suppressed. I further verify that:

- i. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
- ii. All the required attachments have been completely and legibly attached to this form.

To be digitally signed by



- Chartered Accountant (in whole-time practice) or Cost Accountant (in whole-time practice) or
 Company Secretary (in whole-time practice)

whether Associate or Fellow

Associate

Fellow

Membership No.

Certificate of practice number

Note: Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.

For office use only:

eForm Service request number (SRN)

E-form filing date

(DD/MM/YYYY)

This e-form is hereby registered

Digital signature of the authorising officer

Date of signing

(DD/MM/YYYY)

10. Service request number(SRN) of Form INC-28

Attachments

1. Copy(s) of resolution(s) along with copy of explanatory statement under section 102
2. Altered memorandum of association
3. Altered articles of association

5. Optional attachment(s) - If any

Attach

Attach

Attach

Attach

List of attachments

Remove Attachment



September 27, 2019

To,
The Chief Engineer (Civil)
New Mangalore Port Trust, Panambur, Mangalore - 575010

Sub: Letter of Award (LOA) for Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port Trust ("NMPT") – Reg
Ref: 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS - Dated 09.09.2019;
Your letter ref no. 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS – Dated 26/08/2019.

Dear Sir,

With reference to our letter dated September 23, 2019, kindly find enclosed here with the following documents of the JSW Mangalore Container Terminal Private Limited ("SPV").

- c) The Certificate of Incorporation with the name: JSW Mangalore Container Terminal Private Limited;
- d) Memorandum of Association, with container terminal object & Articles of Association;
- e) Undertaking;
- f) List of Directors and Shareholding pattern as on date;
- g) Board Resolution authorization to sign Concession Agreement

A Further we request that the Concession Agreement may be executed on agreeable terms, on any date specified by NMPT. Kindly also inform, if any, other documents or information is required from our end.

Thanking you,
Yours sincerely,

For JSW Infrastructure Limited

Devki Nandan

Sr. Vice President, Business Development and M&A



*518 by CE(C)
07/10/19*

*1694/CE(C)
07/10/19*

*518 by CE(C)
10/10/19
341/EE(C)
11/10/19*

*Dy CE(C) [Signature] 9/10/19
EE(C)
~~AE M (Contract)~~ [Signature]
[Signature] 7/10/2019*

*AE(C) [Signature]
AE(C) Virek
Pl put up action on 'A'
on position [Signature]
240 11/10/19*



UNDERTAKING

We, JSW Infrastructure Limited (CIN No. U45200MH2006PLC161268), having our registered office at JSW Center, Bandra Kurla Complex, Mumbai 400051 through our authorized signatory Mr.Deviki Nandan (Authorized signatory), do hereby undertake as follows:

1. That JSW Mangalore Container Terminal Private Limited, CIN no. U74900GA2014PTC007400, is our wholly own subsidiary and said subsidiary company will act as Special Purpose Vehicle (SPV) exclusively for the execution of the Concession Agreement to be entered into with New Mangalore Port Trust ("NMPT") for Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT BASIS at New Mangalore Port.
2. That JSW Infrastructure Limited, will indemnify NMPT from all the losses, damages if any, suffered or occurred by NMPT from accepting existing subsidiary as SPV instead of fresh incorporation of the SPV.

Place: Mumbai

Date: September 27, 2019

For JSW Infrastructure Limited

Devki Nandan

Sr. Vice President, Business Development and M&A
(Authorised Signatory)





Regd. Office : JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
CIN : U45200MH2006PLC161268
Phone : +91 22 4296 1000
Fax : +91 22 4296 3000
Website : www.jsw.in

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF JSW INFRASTRUCTURE LIMITED HELD ON MAY 21, 2019 AT ROOM NO 4, 8TH FLOOR, JSW CENTRE, BANDRA KURLA COMPLEX, MUMBAI 400051 AT 1.15 P.M.

*RESOLVED THAT approval be and is hereby accorded to participate in Bid - Mechanization of Berth No. 14 for Handling Containers and other Clean Cargo on DBFOT (Design, Build, Finance, Operate and Transfer) basis under Public Private Partnership Model (PPP) being developed by the New Mangalore Port Trust (the "Authority");

RESOLVED FURTHER THAT Mr. Arun Maheshwari - JMD & CEO, Mr. Lalit Singhvi - Director and CFO and Mr. Devki Nandan - Sr. VP (Business Development and M&A) ("Authorised Signatories") be and are hereby severally authorised on behalf of the Company, to do signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.


RESOLVED FURTHER THAT if required, Power of Attorney be issued in favour of the Authorised Signatories, under the signature of any Director of the Company.

RESOLVED FURTHER THAT if required, the above referred Authorised Signatories is further authorised to delegate the aforesaid powers to any other officials/Authorised Representatives through a Letter of Authority/Power of Attorney duly authenticated by the said Authorised Signatories.

RESOLVED FURTHER THAT any Director of the Company or the CFO or the Company Secretary, be and are hereby severally authorised to furnish a copy of the resolution, certified as true, to the concern authorities."

CERTIFIED TRUE COPY

For JSW INFRASTRUCTURE LIMITED


Gazal Qureshi
Company Secretary



CERTIFIED TRUE COPY



MEMORANDUM
OF
ASSOCIATION
&
ARTICLES
OF
ASSOCIATION
OF
JSW MANGALORE
CONTAINER
TERMINAL PRIVATE
LIMITED

CERTIFIED TRUE COPY

For JSW Mangalore Container Terminal Pvt. Ltd.

Ravjani Ranjan Patra
Director/Authorised Signatory

2/1/20



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies
Company Law Bhawan, EDC Complex Plot No. 21, Goa, Goa, India, 403001

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U74900GA2014PTC007400

I hereby certify that the name of the company has been changed from JSW TERMINAL (MORMUGAO) PRIVATE LIMITED to JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name JSW TERMINAL (MORMUGAO) PRIVATE LIMITED.

Given under my hand at Goa this Twenty sixth day of September two thousand nineteen.



KOVVURI SURYANARAYANA REDDY

Registrar of Companies
RoC - Goa

Mailing Address as per record available in Registrar of Companies office:

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

1ST FLOOR, PORT USERS COMPLEX,, MORMUGAO HARBOUR, MORMUGAO, South Goa,
Goa, India, 403803





प्रारूप 1

पंजीकरण प्रमाण-पत्र

कॉर्पोरेट पहचान संख्या : U74900GA2014PTC007400

2013 - 2014

मैं एतद्वारा सत्यापित करता हूँ कि मैसर्स

JSW TERMINAL (MORMUGAO) PRIVATE LIMITED

का पंजीकरण, कम्पनी अधिनियम 1956 (1956 का 1) के अंतर्गत आज किया जाता है और यह कम्पनी प्राइवेट लिमिटेड है।

यह निगमन-पत्र आज दिनांक ग्यारह जनवरी दो हजार चौदह को गोआ में जारी किया जाता है।

Form 1

Certificate of Incorporation

Corporate Identity Number : U74900GA2014PTC007400

2013 - 2014

I hereby certify that JSW TERMINAL (MORMUGAO) PRIVATE LIMITED is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is private limited.

Given at Goa this Eleventh day of January Two Thousand Fourteen.

Registrar of Companies, Goa, Daman and Diu

कम्पनी रजिस्ट्रार, गोआ, दमन एवं द्यू

*Note: The corresponding form has been approved by SRIDHAR PAMARTHI, Registrar of Companies and this certificate has been digitally signed by the Registrar through a system generated digital signature under rule 5(2) of the Companies (Electronic Filing and Authentication of Documents) Rules, 2006.

The digitally signed certificate can be verified at the Ministry website (www.mca.gov.in).

कम्पनी रजिस्ट्रार के कार्यालय अभिलेख में उपलब्ध पत्राचार का पता :

Mailing Address as per record available in Registrar of Companies office:

JSW TERMINAL (MORMUGAO) PRIVATE LIMITED

1ST FLOOR, PORT USERS COMPLEX,, MORMUGAO HARBOUR,

MORMUGAO - 403803,

Goa, INDIA



THE COMPANIES ACT, 2013
COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION

OF

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

- I. The name of the company is **JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED**
- II. The Registered Office of the Company will be situated in the State of Goa.
- III. The objects for which the Company is established are :
 - *A The main objects of the Company to be pursued by the Company on its incorporation are :
 1. To develop, operate, handle and maintain Container Terminal at Berth No.14 on Design, Build, Finance, Operate, and Transfer (DBFOT) basis under Public Private Partnership Model (PPP) for Handling Containers and other Clean Cargo at New Mangalore Port and provide integrated container handling services which include container freight station, ship to shore transfer, receiving or transportation of containers from customer site or factory, movement between berth and yard, lift-off at yard and lift-on for delivery by road or rail and vice versa and all other allied and planning activities for handling and storage of containers, stuffing and destuffing activities, custom clearance and all other activities or operations as may be necessary for carrying out container and clean cargo handling services or transportation at New Mangalore Port and to enter into Concession Agreement with New Mangalore Port Trust and to carry out other related and ancillary activities as per the Concession Agreement.

**Altered/Amended vide special resolution passed at the Extra-Ordinary General Meeting of members held on September 19, 2019*

***B Matters which are necessary for furtherance of the objects specified in clause III A are**

2. To become members and participate in trading, settlement and other activities of commodity exchange/s in India (including national multi-clearing/settlement of trades in spots, in futures and in derivatives of all the above commodities permitted under the laws of India.
3. To enter into contracts, agreements and arrangements with any other company, firm or person for the carrying out by such other company, firm or person on behalf of the Company, of the objects for which the Company is formed.
4. To repair, alter, clean any goods from time to time belonging to the Company.
5. To employ experts to investigate and examine into the condition, prospects, value, character, and circumstances of business concerns and undertaking and generally of any assets, property or rights.
6. To operate a branch of a business which the Company is authorised to carry on by means, or through the agency, of any subsidiary company or companies, and to enter into any agreement with such subsidiary company for taking the profits and bearing the losses of any business or branch so carried on, or for financing any such subsidiary company or guaranteeing its liabilities or to make any other arrangement which may seem desirable with reference to business or branch so carried on including power at any time and either temporarily or permanently to close any such branch or business.

7. To nominate Directors or Managers of any subsidiary company or of any other company in which this Company is or may be interested.
8. To take part in the management, supervision and control of the business or operation of any company or undertaking having similar objects.
9. For the purpose mentioned in the preceding clause, to appoint and remunerate any Directors, trustees, accountants or other experts or agents.
10. To purchase, take on lease or in exchange, hire or otherwise acquire any immovable or moveable property and any rights or privileges which the Company may think necessary or convenient for the purposes of its business and, in particular, any land, buildings, basements, machinery, plant and stock-in-trade, and either to retain any property to be acquired for the purposes of the Company's business or to turn the same to account as may seem expedient.
11. To invest and deal with surplus monies of the Company in such manner as may from time to time be determined, subject to provisions of the Act.
12. To undertake and execute any trusts the undertaking of which may seem to the company desirable either gratuitously or otherwise.
13. To sell, lease, mortgage, grant license, easements and other rights over and in any other manner deal with or dispose of the undertakings, property, assets, rights, and effects of the Company, or any part thereof, for such consideration as the Company may think fit and, in particular, for shares, debentures or securities of any other Company

whether or not having objects altogether or in part similar to those of the Company.

14. To acquire and undertake the whole or any part of the business, properties or liabilities of any person, firm or company carrying on or proposing to carry on business which the Company is authorised to carry on, or interested in carrying on, or which can be carried on in conjunction therewith.
15. To amalgamate, enter into any partnership or partially amalgamate with or acquire interest in the business of any other company, whether or not having objects altogether or in part similar to those of the Company, or enter into any arrangement for sharing profits, or for co-operation or for limiting competition or for mutual assistance, with any such company, and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture-stock or securities that may be agreed upon, and to hold and retain, or sell mortgage and deal with any shares, debentures, debenture-stock or securities so received.
16. To issue or allot fully or partly paid shares in the capital of the Company in payment or part payment of any movable or immovable property purchased or otherwise acquired by the Company or any services rendered to the Company.
17. To enter into partnership or into any arrangement for sharing profits or losses or for any union of interests, joint-venture, reciprocal concession or co-operation with any person or persons, or Company or Companies carrying on, or engaged in or about to carry on, or engage in, or being authorised to carry on or engage in business or transaction which this Company is authorised to carry on.
18. To establish or promote or concur in establishing or promoting any company or companies having similar objects for the purpose of

acquiring all or any of the property, rights and liabilities of the Company or for any other purpose and to place or guarantee the placing, of underwrite, subscribe for other otherwise, acquire all or any part of the shares, debentures or other securities of any such other Company.

19. To ensure the whole or any part of the property of the Company either fully or partially to protect and indemnify the company from liability or loss in any respect either fully or partially and also to ensure and to protect and indemnify any part or portion thereof either on mutual principal or otherwise.
20. To apply for, promote and obtain any Act, Charter - privilege, concession, license, authorization or any Government, state of Municipality, Provincial order or license or any authority for enabling the Company to carry on any of its objects into effect, or for extending any of the powers of the Company, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the Company's interest.
21. To apply for, purchase, or otherwise acquire, and project and renew in any part of the world, any patent rights, brevets d'invention, trademarks, designs, licenses, concessions, and the like conferring any exclusive or non-exclusive or limited right to their use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Company and to use exercise, develop or grant licenses in respect of or otherwise turn to account the property, rights, or information so acquired, and to expend money in experimenting upon, testing or improving any such patents, inventions or rights.
22. To establish, provide, maintain and conduct, or otherwise subsidize, research, laboratories and experimental workshops for scientific and

technical research and experiments and to undertake and carry on all scientific and technical researches, experiments, and tests of all kinds and to promote, studies and research, both scientific and technical investigations and inventions by providing, subsidizing, endowing or assisting laboratories, workshops, libraries, lectures, meetings and conferences and by providing for the remuneration of scientific or technical professors or teachers and by providing for the award of exhibitions, scholarships, price and grants to students or otherwise and generally to encourage, promote and reward studies researches, investigations, experiments, tests and inventions of any kind that may be considered likely to assist or benefit directly or indirectly any of the business which the Company is authorized to carry on.

23. To make donations to such persons or institutions and in such cases either of cash or any other assets as may be thought directly or indirectly conducive to any of the Company's objects or otherwise expedient and, in particular, to remunerate any person or corporation introducing business to this Company, and also to subscribe, contribute, or otherwise assist or guarantee money for charitable, scientific, religious or benevolent, national, public, cultural, educational, or other institutions, objects or for any exhibition or for any public, general or other objects and to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences for the benefit of the employees or ex-employees (including Directors) of the Company or the dependents of such person and in particular or other benefit societies and to grant pensions, allowances, gratuities and bonuses either by way of annual payments or a lump-sum and to make payment towards insurance and to form and contribute to provident benefit funds and other welfare funds of or for such persons.
24. To establish and maintain or procure the establishment and maintenance of any contributory pension or super annuation funds for the benefit of and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were to any time in the employment or service of the Company,

or of its predecessors in business or who are or were at any time Directors or officers of the Company, and the wives, widows, families, and dependents of any such persons and to also establish and subsidize and subscribe to any institutions, associations, trusts, clubs or funds calculated to be for the benefit of or to advance the interests and well being of the aforesaid persons or the Company and make payments to or towards the insurance of any such person as aforesaid, and do any of the matters aforesaid.

25. To train or pay for training in India or abroad any of the Company's employees or officers or any candidate in the interest of or furtherance of the Company's objects.
26. To refer or agree to refer any claim, demand, dispute or any other question, by or against the Company, or in which the Company is interested or concerned, and whether between the Company and the member or members of his or their representatives, or between the Company and third parties, to arbitration in India or at any place outside India, as per Arbitration and Reconciliation Act 1996 and to observe and perform and to do all acts, deeds, matter and things to carry out or enforce the award.
27. To pay out of the funds of the Company all expenses which the Company may lawfully pay its respect to the promotion, formation and registration of the Company or the issue of its capital including brokerage and commission for obtaining applications for or taking, placing or underwriting or procuring the underwriting of shares, debentures or other securities of the Company.
28. To pay all preliminary expenses of any company promoted by the Company or any company in which the Company is or may contemplate being interested, including in such preliminary expenses all or any part of the costs and expenses of owners of business or property acquired by the Company.

29. To pay for any rights or property acquired by the Company and to remunerate any person or company for services rendered or to be rendered in placing of shares in the Company's capital or any debentures, debenture-stock, or other securities of the Company, credited as paid-up in full or in part or otherwise.

30. To adopt such means of making known the business of the Company as may seem expedient, and, in particular, by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals, and by granting prizes, rewards and donations.

31. To lend and advance money or to give credit to such persons or companies and on such terms as may seem expedient and, in particular, to customers and other having dealings with the Company and to guarantee the performance of any contract or obligation and the payment of money of or by any such persons or companies and generally to give guarantees and indemnities.

32. To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time determine and to open and operate any type of bank accounts with the Banks and obtain credit facilities with or without securities for its business. Subject to the provisions of Section 58-A of the Companies Act, 1956 and directives of Reserve Bank of India to receive money on loan and borrow or raise money in such manner as the Company shall think fit, and, in particular, by the issue of debentures or debenture-stock (perpetual or otherwise) and to secure the repayment of any money borrowed, raised or owing or the repayment or performance of any debt liability obligation contract guarantee or other engagement incurred or to be entered into by the Company or any other person or company in any way and in particular by the issue of debentures or debenture-stock (perpetual or otherwise) or by mortgage, charge or lien upon all or any of the property or assets of the Company (both

present and future), including its uncalled capital, and to purchase, redeem or pay off any securities.

33. To execute any trusts the undertaking of which may seem to the Company desirable and either gratuitous or otherwise.
34. To draw, make, accept, endorse, discount, execute and issue, bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable or transferable instruments or securities.
35. To sell, improve, manage, develop, exchange, lease, mortgage, dispose-off, turn to account or otherwise deal with all or any part of the property and rights of the Company for the time being and to insure any of the properties, undertakings, contracts, risks or obligations of the Company in any manner whatsoever. Subject to the provisions of the Companies Act, 1956, to distribute among the members in specie any property of the Company in the event of winding-up.
36. To insure the whole or any part of the property of the Company, either fully or partially, and to protect and indemnify the Company from liability or loss in any respect, either fully or partially, and also to insure and to protect and indemnify any part or portion thereof either on mutual principle or otherwise.
37. To carry out in any part of the world all or any part of the Company's objects as principals, agents, factors, trustees, contractors, or otherwise, either alone or in conjunction with any other person, firm, association, corporate body, municipality, province, state, body politic or government or colony or dependency thereof.
38. To exercise all or any of its corporate powers, rights and privileges and to conduct its business in all or any of its branches in the Union of

India, and in any or all states, territories, possessions, colonies and dependencies thereof, in any or all foreign countries, and for this purpose to have and maintain and to discontinue such number of offices and agencies therein as may be convenient.

39. To procure the Company to be recognised in any part of the world.

** Clause III C - Clause no. 42 to 48 deleted*

** Clause 1 to 41 rearranged as Clause 1 to 39*

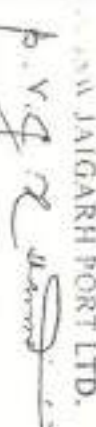


vide special resolution passed at the Extra-Ordinary General Meeting of members held on September 19, 2019

IV. The liability of the members is limited.

V. a) The Authorised Share Capital of the Company is Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- each (Rupees Ten only)

b) Paid-up capital of the company should be minimum Rs.1,00,000/- (Rupees One Lakh Only)

We the several persons whose names and addresses are subscribed below are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names.

Name, Address, Description and Occupation of each Subscriber	No. of equity shares	Signature of Subscriber	Name, Address, Description and Occupation of witness and his signature.
<p>1 JSW Jaigarh Port Limited Company Business JSW Centre, Bandra Kurla Complex, Bandra East, Mumbai 400051 Maharashtra through its Authorised Signatory Capt Bishwanath S/o M. B. Swamy vide resolution dated 30th October, 2012 having Occupation Executive address:- 1406 14th Floor Mount Aps, 'A' wing Bhakti Park, Near Marx Theater, Nadala (E) Mumbai 400 037</p>	<p>9900 (Nine thousand nine hundred only)</p>	<p>Director / Authorised Signatory  JSW JAIGARH PORT LTD.</p>	<p> WITNESS TO BOTH GAZAL QURESHI P/O IZBAL QURESHI 94F KADRI BLDG 15th FLOOR SV ROAD IRLA MUMBAI 40002 OCCUPATION . SEAVILLE</p>
<p>2. Navinder Singh Karon S/o Gurdip Singh Karon (NOMINEE OF JSW Jaigarh Port Ltd) Service Prime Harmony 302 Airport Road Chicalim Marmugao Marmugao Goa 403711</p>	<p>100 (Hundred)</p>	<p></p>	
	<p>10,000</p>		

Date: 4/12/2013 (TEN THOUSAND ONLY)

Place: MUMBAI

THE COMPANIES ACT, 2013
(A Company Limited by Shares)
***ARTICLES OF ASSOCIATION [AOA]**
OF
JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

INTERPRETATION CLAUSE

1. (1) In these Regulations :-

(a) "Company" means 'JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED'

(b) "Office" means the Registered Office of the Company.

(c) "Act" means the Companies Act, 2013, and any statutory modification thereof.

(d) "Seal" means the Common Seal of the Company.

(e) "Directors" means the Directors of the Company and includes persons occupying the position of the Directors by whether names called.

(2) Unless the context otherwise requires words or expressions contained in these Articles shall be the same meaning as in the Act, or any statutory modification thereof in force at the date at which these Articles become binding on the Company.

PRIVATE COMPANY

2. The Company is a Private Company within in the meaning of Section 2 (68) of the Companies Act, 2013 accordingly it means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles:-

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that:-

(a) persons who are in the employment of the company; and

(b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

SHARE CAPITAL AND VARIATION OF RIGHTS

3.

i. The Authorised Share Capital of the Company shall be such amounts and be divided into such shares as may, from time to time, be provided in Clause V of the Memorandum of Association with power to increase or reduce the capital in accordance with the Company's regulations and legislative provisions for the time being in force in that behalf with the powers to divide the share capital, whether

original increased or decreased into several classes and attach thereto respectively such ordinary, preferential or special rights and conditions in such a manner as may for the time being be provided by the Regulations of the Company and allowed by law.

- ii. The rights of the holders of any class of shares forming part of capital for the time being of the Company may be modified, affected, varied, extended, surrendered or Abrogated in such manner as is or may be provided by the Articles of Association of the Company as originally registered or as altered from time to time.
 - iii. The business of the Company may be commenced soon after the incorporation of the Company as and when the Directors shall think fit notwithstanding that part of the shares have been allotted.
 - iv. The shares shall be under the discretionary control of the Directors who may allot or otherwise dispose of the same.
 - v. The Company in general meeting may decide to issue fully paid up bonus share to the member if so recommended by the Board of Directors.
 - vi. The certificate to share registered in the name of two or more persons shall be delivered to first named person in the register and this shall be a sufficient delivery to all such holders.
4. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,-
- (a) One certificate for all his shares without payment of any charges; or
 - (b) Several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.
- (ii) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid -up thereon.
- (iii) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
5. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.
- (ii) The provisions of Articles (5) and (6) shall mutatis mutandis apply to debentures of the company.
6. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

PREFERENCE SHARES

9. The Company shall, subject to provisions of the Companies Act has power to issue preference shares redeemable at the option of the Company or to issue share with disproportionate voting rights.

ALTERATION TO MEMORANDUM

10. The Company shall have the power to alter the conditions of the Memorandum in any manner.

CONTROL OF SHARES

11. The shares of the Company shall be under the control and discretion of the Board of Directors who may divide the shares into several classes and subject to the provisions herein contained may allot, transfer or persons and for such consideration upon such terms and conditions, at such time as the directors may in their absolute discretion think fit and such shares may be issued at par or at a premium. The Directors may allot and issue shares in the capital of the company in payment or part payment for any property sold and transferred or for services rendered to the company or the conduct of its business or for any other consideration and any shares so allotted may be issued as fully paid up and/or partly paid up shares. The company shall have the power to issue shares having disproportionate voting rights.

SHARES HELD JOINTLY

12. If the shares are held in the name of two or more jointly, then the person first named in the Register of Members shall for all the purpose except voting and transfer, be deemed to be sole holder thereof. But the joint holders are severally and jointly liable for all purpose.

INCREASE OF CAPITAL

13. The Company in General Meeting may, from time to time increase the Capital by the creation of new shares, such increase to be of such aggregate amount and to be divided into shares of such respective amounts as the resolution shall prescribe. Subject to the provisions of the Act, any shares of the original or increased Capital shall be issued upon such terms and conditions and with such right and privileges annexed thereto, as the General Meeting resolving upon the creation thereof shall direct, and if no direction be given, as the Directors shall determine and in particular, such may be issued with a preferential or qualified right to divide and in the distribution of Assets of the Company.

LIEN

14. The Company shall have a first and paramount lien upon all the shares (not being a fully paid up share) registered in the name of such member (whether solely or jointly with others) and upon the proceeds of sale thereof for his debts, liabilities and engagements (whether presently payable or not) solely or jointly with any other person, to or with the Company, whether the period for the payment, fulfillment or discharge thereof shall have actually a lien or not and such lien shall extend to all dividends, from time to time, declared in respect of shares, subject to section 124 and bonuses declared from time to time in respect of such shares under the Act. The Board of Directors may at any time declare any shares to be wholly or in part exempt from the provisions of this clause.

CALLS ON SHARES AND TRANSFER OF SHARES

15. The Directors are empowered to make call on members of any amount payable at a time fixed by them.
16. Any member desiring to sell any of his shares must notify the Board of Directors of the number of shares, the fair value and the name of the proposed transferee and the Board must offer to the other share holders the shares offered at the fair value and if the offer is accepted, the shares shall be transferred to the acceptor

and if the shares or any of them, are not so accepted within one month from the date of notice to the Board the members proposing transfers shall, at any time within three months afterwards, be at liberty, subject to Articles 19 and 20 hereof, to sell and transfer the shares to any persons at the same or at higher price.

17. No transfer of shares shall be made or registered without the previous sanction of the Directors, except when the transfer is made by any member of the Company to another member or to a member's wife or child or children or his heirs and the Directors may decline to give such sanction without assigning any reason subject to Section 58 and 59 of the Act.
18. The Directors may refuse to register any transfer of shares (1) where the Company has a lien on the shares or (2) where the shares are not fully paid up shares, subject to Section 58 and 59 of the Companies Act, 2013.
19. Subject to Section 58 and 59 of the Act, the Directors may in their discretion, without assigning any reason, refuse to register the transfer of any shares to any person, whom it shall, in their opinion, be undesirable in the interest of the Company to admit to membership.
20. At the death of any members his or her shares be recognised as the property of his or her heirs upon production of reasonable evidence as may required by the Board of Directors.
21. The instrument of transfer must be accompanied by the certificates of shares.

TRANSMISSION OF SHARES

22. (i) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.
(ii) Nothing in clause (i) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
23. (i) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—
 - (a) to be registered himself as holder of the share; or
 - (b) to make such transfer of the share as the deceased or insolvent member could have made.(ii) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.
24. (i) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.
(ii) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.
(iii) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.
25. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company. Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days,

the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.

FORFEITURE OF SHARES

26. If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.
27. The notice aforesaid shall—
 - (a) Name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.
28. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
29. (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
 - (ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.
30. (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
 - (ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
31. (i) A duly verified declaration in writing that the declared is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.
 - (ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
 - (iii) The transferee shall thereupon be registered as the holder of the share.
 - (iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
32. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

ALTERATION OF CAPITAL

33. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in there solution.

34. Subject to the provisions of section 61, the company may, by ordinary resolution,—
- (a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
 - (c) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;
 - (d) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
35. Where shares are converted into stock,—
- (a) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit:
Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.
 - (b) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
 - (c) Such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.
36. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law—
- (a) Its share capital;
 - (b) Any capital redemption reserve account; or
 - (c) Any share premium account.

CAPITALISATION OF PROFITS

37. (i) The company in general meeting may, upon the recommendation of the Board, Resolve—
- (a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and
 - (b) that such sum be accordingly set free for distribution in the manner specified in clause (ii) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.
- (ii) The sum aforesaid shall not be paid in cash but shall be applied
- (a) paying up any amounts for the time being unpaid on any shares held by such members respectively;

- (b) Paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions afore said;
 - (c) Partly in the way specified in sub-clause (A) and partly in that specified in sub-clause (B);
 - (d) A securities premium account and a capital redemption reserve account may, for the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares;
 - (e) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.
38. (i) Whenever such a resolution as aforesaid shall have been passed, the Board shall—
- (a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and
 - (b) generally do all acts and things required to give effect thereto.
- (ii) The Board shall have power—
- (a) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable in fractions; and
 - (b) to authorise any person to enter, on behalf of all the members entitled there to, into an agreement with the company providing for the allotment to them respectively, credited a fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;
- (iii) Any agreement made under such authority shall be effective and binding on such members.

BUY-BACK OF SHARES

39. Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

ISSUE OF SHARES IN KIND

40. The Company subject to the provisions of the Companies Act, 2013 and the statutory modifications and applicable provisions, if any, is authorised to issue the Shares in kind to the Shareholders.

GENERAL MEETINGS

41. All general meetings other than annual general meeting shall be called extraordinary general meeting.
42. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.
- (ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

PROCEEDINGS AT GENERAL MEETINGS

43. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceed to business.

(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.

44. The chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.
45. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.
46. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.
47. (i). The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
(ii). No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
(a) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting
(b) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

VOTING RIGHTS AND PROXY

48. Subject to any rights or restrictions for the time being attached to any class or classes of shares,—
(a) on a show of hands, every member present in person shall have one vote; and
(b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company
49. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once
50. (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
(ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.
51. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
52. Any business other than that upon which a poll has been demanded may be preceded with, pending the taking of the poll.
53. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
54. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
(ii). Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.
55. The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the

person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

56. An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.
57. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given: Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

DIRECTORS

58. The number of Directors shall not be less than two and not more than fifteen.
59. **The first Directors of the Company shall be:-**

- a. **MR. RASHMI RANJAN PATRA S/O: MR. GOURANGA CHARAN PATRA**
b. **MR. NARINDER SINGH KAHLOON S/O: MR. GURDIP SINGH KAHLOON**

60. The Directors may from time to time, appoint one or more of their body to the office of the Managing Director for one or more of the divisions of the business carried on by the Company and to enter into agreement with him in such terms and conditions as they may deem fit.
61. Subject to the provisions of section 149, the Board of Directors, at any time and from time to time, to appoint any person as additional Director in addition to the existing Director so that the total number of Directors shall not at any time exceed the number fixed for Directors in these articles. Any Directors so appointed shall hold office only until the next following Annual General Meeting but shall be eligible thereof for election as Director.
62. The Managing Director may be paid such remuneration as may, from time to time, be determined by the Board and such remuneration as may be fixed by way of salary or commission or participation in profits or partly in one way or partly in another subject to the provisions of the Companies Act, 2013.
63. The quorum necessary for the transaction, of the business of the Board meeting subject to Section 174 of the Act, shall be one third of the total strength or at least two whichever is higher. The participation of the directors by video conferencing or by other audio visual means shall also be count for the purpose of quorum.
64. Subject to section 175 of the Act, a resolution in writing signed by the Director except a resolution which the Act specifically required it to be passed at a Board meeting shall be effective for all purposes as a resolution passed at a meeting of Directors duly called, held and constituted.
65. If any Director or Directors shall undertake **special services** for the company, the Board of Directors may sanction a special remuneration for his or their work, as they may think proper provided that the confirmation of the members in the General Meeting shall be taken thereof.

MEETING OF BOARD OF DIRECTORS

66. (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.

- (ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
67. (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
(ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.
68. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
69. (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.
(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.
70. (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
(ii). Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
71. i) A committee may elect a Chairperson of its meetings;
ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.
iii)(i) A committee may meet and adjourn as it thinks fit.
(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.
(iii) All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
(iv) Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.
72. The quorum necessary for the transaction of the business of Directors shall be two Directors or one third of the total number of Directors whichever is higher. A meeting of the Directors for the time being, at which a quorum is present, shall be competent to exercise all or any of the authorities, powers and discretions by law or under the Articles and regulations for the time being vested or exercisable by the Directors generally.
73. For Meeting of Board of Directors of the Company, the Board of Directors may meet for the dispatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

74. A Director or Directors may on the requisition of a director or directors of the Company, at any time, summon a meeting of the Board.
75. Save as otherwise expressly provided in the Act, question arising at any meeting of the Board shall be decided by a simple majority of votes.
76. The Members may by passing an Ordinary Resolution remove a director, before the expiry of his period of office.

CHIEF EXECUTIVE OFFICER, MANAGER, COMPANY SECRETARY OR CHIEF FINANCIAL OFFICER.

77. Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

78. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

COMMON SEAL

79. (a) The Common Seal of the Company may be made either of metal or of rubber as the directors may decide.
- (b) The Board shall provide for the safe custody of the Company's Common Seal.
- (b) The Seal shall not be affixed to any instrument except by the authority of a resolution of the Board or of a Committee of the Board authorised by it in that behalf and except in the presence of at least one director who shall sign every instrument to which the seal of the Company is so affixed. The share certificate will, however, be signed and sealed in accordance with Rule prescribed by Central Government in this regard.

BORROWING POWERS

80. Subject to section 73 and 179 of the Companies Act, 2013, and Regulations made there under and Directions issued by the RBI the directors may, from time to time, raise or borrow any sums of money for and on behalf of the Company from the member or other persons, companies or banks or they may themselves advance money to the company on such interest as may be approved by the Directors.
81. The Directors may, from time to time, secure the payment of such money in such manner and upon such terms and conditions in all respects as they deem fit and in particular by the issue of bonds or debentures or by pledge, mortgage, charge or any other security on all or any properties of the Company (both present and future) including its uncalled capital for the time being.

OPERATION OF BANK ACCOUNTS

82. The Directors shall have the power to open bank accounts to sign cheques on behalf of the Company and to operate all banking accounts of the Company and to receive payments, make endorsements, draw and

accept negotiable instruments, drafts and bills or may authorise any other person or persons to exercise such powers.

DIVIDENDS AND RESERVE

83. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
84. Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
85. (i) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.
- (ii) The Board may also carry forward any profits which it may consider necessary to divide, without setting them aside as a reserve.
86. (i) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.
- (ii) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
- (iii) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
87. The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
88. (i) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.
- (ii) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.
89. Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.
90. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.
91. No dividend shall bear interest against the company.

ACCOUNTS

92. (a) The Board shall, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulation the accounts and books of the Company or any of them shall be open to the inspection of members (not being Director).

93. No members (not being Director) shall have any right of inspecting any accounts or books of account of the Company except as conferred by law or authorised by the Board or by the Company in General Meeting.
94. The Directors shall in all respect comply with the provisions of Section 128,134, 137, 206, 207 and 208, of the Act, and profits and Loss Account, Balance Sheet and Auditors Report and every other document required by law to annexed or attached as the case may be, to the Balance Sheet, to be sent to every member and debenture holder of the Company and every trustee for the holders of the debentures issued by the Company at least twenty one days before the date of Annual general meeting of the Company at which they are to be laid, subject to the provisions of section 136 of the Act.

AUDIT

95. (a) The first Auditor of the Company shall be appointed by the Board of Directors within one month from the date of registration of the Company and the Auditors so appointed shall hold office until the conclusion of the first Annual General Meeting.
- (b) At first annual General Meeting the Company shall appoint an Auditor to hold Office from the conclusion of the Meeting till the conclusion of its sixth Annual General Meeting and thereafter till the conclusion of every six meeting.
- (c) The remuneration of the Auditor shall be fixed by the Company in the Annual General Meeting or in such manner as the Company in the Annual General Meeting may determine. In case of an Auditor appointed by the Board his remuneration shall be fixed by the Board.

WINDING UP

96. Winding up when necessary will be done in accordance with the requirements of the Companies Act, 2013 or statutory modification thereto.

SECRECY

97. Subject to the provisions of law of land and the act, every manager, auditor trustee, member of a committee, officer servant, agent accountant or other persons employed in the business of the company shall, if so required by the Board of Directors before entering upon his duties, sign, declaration, pledging himself to observe strict secrecy respecting all transactions of the Company with its customers and the state of account with individuals and in matters relating thereto and shall by such declaration pledge himself, not to reveal any of the matters which may come to his knowledge in the discharge of his duties except when required to do so by the directors or by any court of law and except so far as may be necessary in order to comply with any of the provisions in these presents.

INDEMNITY

98. Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

GENERAL AUTHORITY

99. Wherever in the applicable provisions under Companies Act, 2013 it has been provide that any Company shall have any right, privilege or authority or that any Company could carry out any transaction only if the Company is authorised by it Articles, then and in that case this regulation hereby authorises and empowers the Company to have such right, privilege or authority and to carry out such transaction as have been permitted by the Act without there being any other specific regulation in that behalf herein provided.

**Adopted vide special resolution passed at the Extra-Ordinary General Meeting of members held on September 19, 2019*

We, the several persons, whose names, addresses and descriptions are hereunder subscribed, are desirous of being formed into a Company in pursuance of this Articles of Association.

Name, Address, Description and Occupation of each Subscriber	Signature of Subscriber	Name, Address, Description and Occupation of witness and his signature.
<p>1. JSW Jaigadh Port Limited Company Business JSW Centre, Bandeda Kwala complex, Bandeda East Mumbai 400051 through its authorized signatory Capt. B.V.K. Sharma - JMD wide resolution dated 30th October 2013 % Mr. B.R. Swamy Occupation - Engineer Address:- 140 C/6th Floor Mount Kailash Living Bldg Park Near Sman Heater Wadala (East) Mumbai 400037</p> <p>2. Navinder Singh Kahlon (Nominee of JSW Jaigadh Stevedoring Port Ltd) Service Singh Kahlon Prime Harmony 302 Airport Road Chicalim Marmugao Marmugao GOA - 403711</p>	<p style="text-align: center;">FOR JSW JAIGADH PORT LTD.</p> <p style="text-align: center;">Director / Authorized Signatory</p> <p style="text-align: center;">B. V. K. Sharma</p> <p style="text-align: center;">Singh Kahlon</p>	<p style="text-align: center;">Witness</p> <p>WITNESS TO BOTH LIAZAL GURESHI % IRBAL GURESHI 94/ KADRI BULDA, 1st FLOOR, SURDAD, IRLA MUMBAI 400052 MAHARASHTRA OCCUPATION: SERVICE</p>

Date: 4/12/2013

Place: MUMBAI



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies
Company Law Bhawan, EDC Complex Plot No. 21, Goa, Goa, India, 403001

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U74900GA2014PTC007400

I hereby certify that the name of the company has been changed from JSW TERMINAL (MORMUGAO) PRIVATE LIMITED to JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name JSW TERMINAL (MORMUGAO) PRIVATE LIMITED.

Given under my hand at Goa this Twenty sixth day of September two thousand nineteen.

CERTIFIED TRUE COPY

For JSW Mangalore Container Terminal Pvt. Ltd.

Rastmi Ranjan Patra
Director/Authorised Signatory



KOVVURI SURYANARAYANA REDDY

Registrar of Companies
RoC - Goa

Mailing Address as per record available in Registrar of Companies office:

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

1ST FLOOR, PORT USERS COMPLEX,, MORMUGAO HARBOUR, MORMUGAO, South Goa,
Goa, India, 403803





JSW MANGALORE CONTAINER TERMINAL PVT. LTD.
(formerly known as JSW Terminal (Mormugao) Pvt. Ltd.)
Regd. Office: Port Users Complex, 1st Floor, Mormugao,
Harbour, Goa 403803
Phone : 0832-252300, Fax : 0832-2523001
CIN: U74900GA2014PTC007400
Website: www.jsw.in Email: infra.mumbai@jsw.in

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED HELD ON SEPTEMBER 26, 2019 AT JSW CENTRE, BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI 400051.

"RESOLVED THAT any Directors of the Company or Mr. Arun Maheshwari or Mr. Lalit Singhvi or Mr. Devki Nandan (collectively known as "Authorised Signatories") be and are hereby severally authorized on behalf of the Company, to sign and execute the Concession Agreement and all other deeds, undertakings & documents required thereto, with New Mangalore Port Trust, ("Authority") for Mechanization of Berth No. 14 for handling Containers and other Clean Cargo on Design, Build, Finance, Operate, and Transfer (DBFOT) basis and to do all such acts, deeds and things as are necessary or required in connection with or incidental thereto.

RESOLVED FURTHER THAT if required, any of the Authorised Signatories are further authorised to delegate the aforesaid powers to any other officials / Authorised Representative of the Company, through Letter of Authority / Power of Attorney duly authenticated by the said Authorised Signatories.

RESOLVED FURTHER THAT the certified true copy of the aforesaid resolution under the signature of any one of the Directors be forwarded to such persons or authorities as may be required."

CERTIFIED TRUE COPY

For JSW Mangalore Container Terminal Pvt. Ltd.

Rashmi Ranjan Patra

Rashmi Ranjan Patra

Director





JSW MANGALORE CONTAINER TERMINAL PVT. LTD.
(formerly known as JSW Terminal (Marmugao) Pvt. Ltd.)
Regd. Office: Port Users Complex, 1st Floor, Marmugao,
Harbour, Goa 403803
Phone : 0832-252300, Fax : 0832-2523001
CIN: U74900GA2014PTC007400
Website: www.jsw.in Email: infra.mumbai@jsw.in

To,
The Chief Engineer (Civil)
New Mangalore Port Trust, Panambur, Mangalore – 575010

Sub : Directorship and shareholding details

List of Directors as on September 27, 2019

Sr. No	Name of Director	DIN	Address
1.	Mr. Rashmi Ranjan Patra	03014938	206, 2nd Floor, Adonis Raheja Acropolis II Deonar Mumbai 400088
2.	Mr. Ritesh Udeshi	06793079	Flat No. 407, A Building, C-Wing, Patel Shopping Centre, Chandavarkar Road, Borivali West Mumbai 400092

List of Shareholders as on September 27, 2019

Sr. No	Name of Shareholder	Number of shares	Percentage of Shareholding
1.	JSW Infrastructure Limited (JSWIL)	9900	99.00%
2.	JSW Shipyard Private Limited (nominee of JSWIL)	100	1.00%
	TOTAL	10,000	100.00%

CERTIFIED TRUE COPY

For JSW Mangalore Container Terminal Pvt. Ltd.

Rashmi Ranjan Patra

Rashmi Ranjan Patra

Director



Email

chiefengineer@nmpt.gov.in

NMPT - JSWIL - Signing of Concession Agreement

From : dilip shetty <dilip.shetty@jsw.in>
Subject : NMPT - JSWIL - Signing of Concession Agreement

Fri, Nov 15, 2019 12:51 PM

1 attachment

To : Paritosh Bala <chiefengineer@nmpt.gov.in>, Shashidhar Koppad <shashidhar.koppad@nmpt.gov.in>, Vivek C.T <vivek.ct@nmpt.gov.in>, Harinath A.V <harinath.av@nmpt.gov.in>, nmptprojectscell@gmail.com

Cc : devki nandan <devki.nandan@jsw.in>, chandra somani <chandra.somani@jsw.in>, mahesh ramachandrappa <mahesh.ramachandrappa@jsw.in>

PA
 Please ask Vivek C.T.
 AE to speak along with
 Deepraj
Bala
 19/11/2019

Dear Sir

With reference to your letter dated 08th Nov 2019. Please find our reply as attached.

Will arrange to send the original copies to NMPT office.

Looking forward to hear from you in regards to signing of Concession Agreement.

Thanks & Regards,

Dilip Shetty | AGM-Business Development | JSW Infrastructure

JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 | Maharashtra | India

M +91 8291024255 | D 22 4286 2137

www.jsw.in

Confidentiality Notice

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify the sender at JSW or System Manager (admin@jsw.in) immediately and destroy all copies of this message and any attachments. Recipients must check this email and its attachments for the presence of viruses before downloading them. JSW Group accepts no liability for any damage caused by any virus transmitted by this email.

— **NMPT - JSWIL 151119 Signing of Concession Agreement.pdf**
 375 KB



Date: 11th November, 2019

To,
The Chief Engineer (Civil)
New Mangalore Port Trust
Panambur, Mangalore - 575010

JSW Infrastructure Limited

Regd. Office : JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
CIN : U45200MH2006PLC161268
Phone : +91 22 4286 1000
Fax : +91 22 4286 3000
Website : www.jsw.in

Sub: Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust ("NMPT") - Reg

Ref: Your letter ref no. 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS dated 8.11.2019

Dear Sir,

With reference to above mentioned letter, we hereby confirm as followings:

- 1) A Confirmation in Original that
 - (a) It shall at all times comply with the provisions of Article 11.2 in respect of shareholding in the Concessionaire.
 - (b) It has the financial standing and resources to fund/ raise finances for undertaking and implementing the project in accordance with the Agreement.

Reply: We hereby confirm and would like to mention that we will be abide by the Concession Agreement.

- 2) In your letter dtd. 27.09.2019, you have neither confirmed that the SPV is duly organised and validly existing under the laws of the jurisdiction of its incorporation nor requested the 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 which is required as per Clause 3.1(a)(viii)(c) of DCA.

Reply: We hereby confirm the same. Further, Clause 3.1(a)(viii)(c) is a Condition Precedent and we will comply the term within stipulated timeframe as per Concession Agreement.

- 3) You are requested to furnish a legal opinion from your legal counsel with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability here of as per Clause 3.1(a)(ix) of DCA.

Reply: We hereby confirm the same. Further, Clause 3.1(a)(ix) is a Condition Precedent and we will comply the term within stipulated timeframe as per Concession Agreement.

- 4) M/s JSW is required to submit indemnity to be signed on Stamp Paper for indemnifying any liability that is suffered or occurred by NMPT from accepting existing subsidiary as SPV instead of fresh incorporation of the SPV. (to be submitted in stamp paper)

Reply: The Indemnity is enclosed herewith (Annexure- A).

- 5) M/s. JSW has submitted list of shareholders. However, kind of shares issued to these shareholder is not mentioned i.e. whether Equity or preference share. This is required to be clarified.

Reply: The SPV has issued Equity shares only.

Trust the same is in order and comply the requirement.

Thanking you,
Yours faithfully,
For JSW Infrastructure Limited

Name: Devki Nandan

Designation: Sr. Vice President- Business Development and M&A



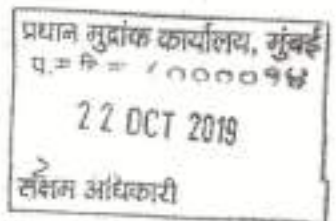
Part of O. P. Jindal Group



महाराष्ट्र MAHARASHTRA

० 2019 ०

VV 977745



UNDERTAKING

श्री. दि. क. रवर्ध

We, JSW Infrastructure Limited (CIN No. U45200MH2006PLC161268), having our registered office at JSW Center, Bandra Kurla Complex, Mumbai 400051 through our authorized signatory Mr Devki Nandan (Authorized Signatory), do hereby undertake as follows :

1. That JSW Mangalore Container Terminal Private Limited, CIN no. U74900GA2014PTC007400, is our wholly subsidiary and said subsidiary company will act as Special Purpose Vehicle (SPV) exclusively for the execution of the Concession Agreement to be entered into with New Mangalore Port Trust ("NMPT") for Mechanization of Berth No 14 for Handling Containers and other Cargo on DBFOT BASIS of New Mangalore Port.
2. That JSW Infrastructure Limited, will indemnify NMPT from all the losses, damages if any, suffered or occurred by NMPT from accepting existing subsidiary as SPV instead of fresh incorporation of the SPV.

Place: Mumbai
Date: 13th November, 2019
For JSW Infrastructure Limited




Devki Nandan
Sr. Vice President- Business Development and M&A
(Authorized Signatory)

Name of the project: Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust.

Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust.

- A. The meeting of Committee was held on 27.11.2019 in the chamber of Chief Engineer (Civil) to finalize the Concession Agreement at New Mangalore Port for "Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT BASIS at New Mangalore Port Trust" and consider the observation raised by JSW Infrastructure Private Limited.
- B. Following members were present during the meeting :

M/s. JSW Concessionaire	M/s. Gianendar & Associates, Financial Consultant & Transaction Advisor	NMPT Concessioning Authority
Shri C. P. Somani (AGM- BD) Shri Dilip Shetty (AGM- BD)	Smt. Manju Agrawal (Partner)	Shri Paritosh Bala, C.E. (C) Shri Harinath A. V, Dy.C.E.(C) Shri Pradeep Kumar Kar, FA&CAO (I/C) Shri Shashikanth P Kodi, EE (MW)

Also present were Shri. Satish Honnakatte, CME, Shri Y. R. Belegal TM, Shri Sathish Kumar, Sr. DTM, Shri Deepraj S Ambat, DM (Corp,Legal) and Shri Vivek C.T, A.E. (C).

Committee mainly discussed the points raised by JSW and deliberated on issues in the light of Pre Bid Queries raised , written replies to the pre bid queries , TAMP relevant notifications , replies to the queries on pre RFP stage , Model Concession Agreement, Draft Concession Agreement and the 4 nos of Corrigendum issued.

Bala *MS* *JS* *Pup* *MS*

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C. All the issues raised by M/s. JSW Infrastructure Ltd. were deliberated in detail including decision taken jointly to finalize the Concession Agreement, which is appended below:-

S. no.	Article	As per concession agreement	As per Model concession agreement	Amendments sought by the Concessionaire M/s. JSW	Discussion and the Minutes of Meeting
1.	Company Address	JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051	-	Registered Office Address to be changed	Incorporated as follows: <u>Concessionaire's address:</u> M/s JSW Mangalore Container Terminal Private Limited having its registered office at 1 st Floor, Port Users Complex, Mormugao, South Goa, Goa, India-403803 <u>Applicant's address:</u> M/s. JSW Infrastructure Private Limited, having its registered office at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051
2.	Article 1.1	"Agreement" means this agreement as of date hereof, including Appendices 1 through 21 as may be amended, supplemented or modified in accordance with the provisions hereof.	"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.	Agreement Definition: Appendix 1-21 is forming part of agreement	Accepted. "Agreement" means this agreement as of date hereof, including Appendices 1 through 21 as may be amended, supplemented or modified in accordance with the provisions hereof.
3.	Article 1.1	"Book Value" means the		Book value:	No change, definition of "Book



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		<p>aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the 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, , and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, , in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 2013, as applicable from time to time.</p>		Intangible assets to be included	Value* as per MCA.
4. Article 1.1		"Consortium" [Not Applicable]		Consortium definition to be deleted	Definition deleted. However words "Not Applicable" mentioned.
5. Article 1.1		"Construction Phase I" means the period from the Date of Award of Concession to the Date of Commercial Operation		Construction phase: Construction Phase 2 is not defined	Definition of "Construction Phase II" added as per sl. no. 18 of Corrigendum- 4 dated 20.02.2019.

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Phase I.	<p>"Construction Phase II" means the period within 12 months after 18 months from the date of achieving commercial target of Phase-I.</p>		
6. Article 1.1	<p>"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.</p>	<p>O & M Contract Definition to be incorporated</p>	<p>Definition of "O&M Contract" is merged with the definition of "Management Contract" as per s. no. 19 of Corrigendum-4 dated 20.02.2019.</p>
7. Article 1.1	<p>"Management Contract including O&M Contract" means the contract between the Concessionaire and the Management Contractor / O&M Contractor in respect of obligations of the Management of the project in accordance with the Request for Proposal / operation and maintenance of the Project in accordance with the provisions of this</p>	<p>Management Contractor: To be checked and incorporated if required</p>	<p>Definition is as per sl. no. 19 of Corrigendum-4 dated 20.02.2019.</p>



Signature

Signature



Signature

Signature

Signature

	8. Article 1.1	Agreement.		Project Capacity: It should be "0.64MTPA for other Cargo other than negative list provided in Appendix 19"	Rectified as per sl. no. 21 of Corrigendum No.4 dated 20.02.2019.
		<p>"Project Capacity" means the capacity of the Project Facilities and Services to handle 2,39,148 TEUs (3.58 MMTPA) for Phase-I and 3,58,722 TEUs (5.38 MMTPA (including Phase-I) for Phase-II container and 0.64 MMTPA (for Other Cargo on non-exclusive basis, which excludes cargo specified in the negative list of cargo which shall not be permitted to be handled at Berth No.14 as listed in Appendix 19.</p>			

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9. Article 1.1	<p>“Scheduled Completion Date Phase I” means the day following completion of 12 (twelve) months from the Date of Award of Concession.</p> <p>“Scheduled Completion Date Phase II” means the day following completion of 12 (twelve) months after commencement of 18 months of achieving 1.80 lakhs TEU's or within 5 years of commencement of commercial operation of Phase-I, whichever is earlier.</p>		<p>Scheduled Project Completion Phase 2: To be modified to clarify</p>	<p>Definition as per sl. no. 18 of Corrigendum No.4 dated 20.02.2019.</p>
10 Article 1.1	<p>“Total Project Cost” means the lowest of;</p> <p>a) The capital cost of the Project, as set forth in the financial package</p> <p>b) actual capital cost of the Project upon completion of Project and</p> <p>c) a sum of Rs. 280.71 crores (Rupees Two Hundred Eighty point Seven One crores)</p>		<p>Total Project Cost (C): To be filled up</p>	<p>TPC of Rs. 280.71 crore is incorporated.</p>

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11 Article 3		(iii) provision of or putting in place arrangement for the provision of supporting project infrastructure by the concessioning authority (This may be retained, omitted or modified based on the project)	Clause to be inserted (iii) putting in place arrangement for the provision of supporting project infrastructure by the concessioning authority	Article 3.1 (b) (iii) added as per MCA.
12 Article 4	The Performance Guarantee furnished under this provision shall be valid until expiry of 126 (one twenty six) months from the Date of award of Concession.		The Performance Guarantee furnished under this provision shall be valid until the expiry of 6 months from the date of commercial operations of Phase I	No change, Article as per DCA.
13 Article 5.1	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 Phase II.		Independent Engineer appointment should be done on Phase wise basis.	Article 5.1 (b) modified as under: "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 for Phase I. For Phase II, Independent Engineer shall be appointed for a period commencing from the Date of 6 (six) months prior to start of

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	14 Article 6.3	<p>(a) 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") ("Completion Certificate Phase I") not later than 12 (twelve) months from the date of commencement of the Concession Period.</p>		<p>Concessionaire.... less than 12 months from the date of award of concession period.</p>	<p>construction for Phase II to the date of expiry of 6 (six) months from the Date of Commercial Operations for Phase II". No change, Article to remain as per DCA.</p>
15	Article 6.5	<p>(f) handover of physical possession of the Project Site (berth area) measuring 1.22 hectares as per Appendix 1 from the date of commencement of commercial operation by</p>		<p>Berth area to be handed over to Concessionaire within 30 days basis written request received from Concessionaire (we may require</p>	<p>No change, Article to remain as per DCA. However, this point was discussed in detail and all concerned have agreed that this is essential to provide some area for installation and commissioning of the Equipments. Accordingly, it is hereby agreed that Concessionaire will request to allot</p>







		the Concessionaire.		berth area for equipment installation, modification etc.)	berth area (part) at appropriate time and NMPT will consider such request on case to case basis.
16	Article 6.5	(g) handover of physical possession of the Project Site (storage area) measuring 6.50 hectares, as specified in Annexure 2, from the date of commencement of commercial operation by the Concessionaire.		Storage Area (complete or part) to be handed over to Concessionaire within 30 days basis written request received from Concessionaire (for construction of building or any other purpose)	No change, Article to remain as per DCA. However, this point was discussed in detail and all concerned have agreed that this is essential to provide some area for construction of building such as Sub-station etc. Accordingly, it is hereby agreed that Concessionaire will request to allot storage area (part) at appropriate time and NMPT will consider such request on case to case basis.
17	Article 6.5	As detailed above		Whenever Concessionaire wants to commence (as per this agreement terms), storage area for Phase -2 to be handed over to Concessionaire within 30 days basis written request received from Concessionaire	No change, Article to remain as per DCA. Further, it was already clarified in SL.No. 21 -Reply to Pre-bid queries stating that Concessing Authority would handover the Phase- 2 land on receipt of written notice from Concessionaire for which rental starts from the date of handing over. Also there is no linkage between handover of the phase-2 land and commencement of Phase-2.
18	Article 6.8	the cost of implementing a single Change of Scope shall		Estimated project cost of respective	No change, Article to remain as per DCA.









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		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;			phase	
19	Article 6.9	Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost			Liquidated Damages should be on estimated project cost of respective Phase	No change, Article to remain as per DCA.
20	Article 7.1 (a)(xii)	The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo handling of the levels set out in Appendix 14 ("Minimum Guaranteed Cargo") and agrees that except as provided in this Agreement, it shall not be entitled to any relaxation of its guarantee in this respect.			Exception list to be provided and incorporated in Minimum Guaranteed Cargo	No change, Article to remain as per DCA.
21	Article 7.1 (a)(xii)	In the event the concessionaire is not able/likely to utilize the project facilities for a continuous period of 48 hours,			a) Terms and conditions of usage of Project facilities by	JSW represented that NMPT is allowed to handle only other cargo as mentioned in negative list as specified in Appendix 19. The matter was discussed in detail







		the authority shall be entitled to use the project facilities on the following terms and conditions without any relaxation in minimum guarantee cargo obligation of concessionaire.		Authority to be defined	and following was decided. We also recommend the following: 1. NMPT is allowed to handle 'Other Cargo' other than negative list as specified in Appendix 19 as per SOP of common user basis as per forecast of Vessels. 2. NMPT will shift the vessel on or prior to arrival of Concessionaire's vessel's with atleast 24 hrs. prior notice from the Concessionaire. 3. NMPT will not utilize equipment and man power of SPV for handling such vessels. However, in case of mutual consent, equipment's and man power can be used on chargeable basis. The charges will be decided mutually.
22	Article 7.1(c) (i)	maintenance of the present depth available at the common user approach channel and lagoon of the port at 14 m		Maintenance of present depth available at common user approach channel and lagoon of the port at 15.1 m.	The word changed from "depth" to "draft".
23	Article 9.2 (a)	S = Average Upfront SoR Rate for Other Cargo	-	S= Specific commodity Upfront SoR rate for other cargo	No change, Article to remain as per DCA.
24	Article 11.1	The shareholding pattern of Concessionaire/each member		Ownership Structure: Blank	Share holding pattern incorporated.












25 Article 11.2	<p>of the Consortium in the Concessionaire is 99% and 1% respectively.</p> <p>The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the two (2) years after COD as also maintain their equity holding in the Concessionaire such that:</p> <p>(a) Selected Bidder/Consortium members together with its/their associates hold not less than 51% (fifty one percent) of its paid up equity capital until 2 (two) years after Date of Commercial Operations Phase 1 and not less than 26% (twenty six percent) of such equity until expiry of 2 years after COD. At any time, after expiry of the aforesaid shareholding period, Lead Member can approach Authority for approval proposing a new entity/</p>	column to be filled up	Article 11.2 retained as per MCA.
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		consortium. Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and			
26	Article 11.2	(b) M/s [●] ("Lead Member") (Not Applicable)		(b) Lead Member Clause: To be deleted	Definition to remain. However "Not Applicable" to be added.
27	Appendix -1	Detailed in Appendix-1		Clean cargo capacity to be added	For 'Other Cargo' other than negative list in Appendix 19 of DCA, capacity added.
28	Appendix -5	within 7 years		Within 5 years	Rectified.
29	Appendix -5	within 12 (Twelve) Months of commencement of Phase -II.		Within 12 months from the actual commencement of work of Phase-II	No change, Article to remain as per DCA.
30	Appendix- 12	Detailed in Appendix-12		To be changed basis Appendix 19	Change incorporated.
31	Appendix-12	-		Export Tariff is also required	During discussion it was agreed that the Concessionaire may take up with TAMP with prior consent from NMPT. At this stage no change in Concession Agreement.
32	Appendix-12	-		Other commodity tariff is also required	During discussion it was agreed that the Concessionaire may take up with TAMP with prior consent from NMPT. At this stage no change in

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33	Appendix -12	-	-	Clause related to Performance linked tariff to be incorporated	Concession Agreement. 5 (ii) to 5 (viii) incorporated.
34	Appendix -15	Detailed in Appendix-15	-	Performance standard to be provided (other than 4 commodity specifically for bagged cargo separate standard to be provided)	No change, as per DCA.
35	Appendix -15	-	-	No storage is provided for clean cargo. In such situation, how it will be calculated?	No change, as per DCA.
36	Article - 3.1(a)(x)	-	-	To be deleted	No change, as per DCA.
37	Appendix 4	-	-	Scope of work in clean cargo to the extent of unloading of cargo and loading onto trucks at Wharf	No change, in view of reply to Pre-bid queries sl. no. 56 and Corrigendum- II.
38	-	-	-	Royalty Payments	No change, as per DCA.

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S. no.	Article	As per concession agreement	Amendments sought by the Concessionaire M/s. JSW	Discussion and the Minutes of Meeting
39	<p>Article 9.2 Payments of Royalty</p>	<p>(a) The Concessionaire shall pay to the Concessing Authority Royalty of Rs.951/- (Rupees Nine Hundred and Fifty One only) per TEU of Container handled on monthly basis.</p> <p>The rate of royalty for other cargo shall be calculated based on the proportionate royalty quoted for Container Cargo against the average SoR for Container Cargo as per the following Formulae:- $R = (QRC / A) \times S$; Where</p> <p>R = Royalty for other Cargo QRC = Rate quoted per TEU for Container S = Average Upfront SoR Rate for Other Cargo A = Average upfront SoR for Container Cargo i.e., Rs.2,250.37, being simple average of upfront SoR for Laden, Empty Containers for both Foreign and Coastal Cargo (3125.51 + 2500.42 + 1875.31 + 1500.24) / 4</p> <p>(b) Royalty per MT of cargo/ TEUs will be indexed to as per the indexation factor notified by TAMP on the quoted rate.</p>	<p>Verbally discussed</p>	<p>No change, as per DCA.</p>

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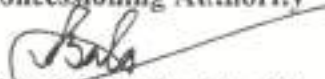
D. Verification of Financial Statements of "SPV" for the Financial Year 2018-19, following was discussed in the meeting:


- (i) Update Balance Sheet as on the date of signing of Concession Agreement to be submitted by the Bidder.
- (ii) In respect of Liability to related parties (Rs. 13.72 lakhs) and loss appearing on the Balance Sheet upto 31.03.2019, the Bidder has to give an undertaking before signing of Concession Agreement for clearing liability to related parties and wiping of the losses.

E. During the meeting JSW Infrastructure Private Limited provided mail dated 20.11.2019 regarding Article 9.1 and Appendix 13 of DCA. As per Appendix 13 (A), "License Fee on lease land rate shall prescribe applicable with effect from 20.02.2017 till 19.02.2022 and will be reviewed/revised after five years". As per the mail from JSW Infrastructure Private Limited a committee headed by Special Secretary and Financial Advisor, Ministry of Shipping has taken view that the upfront tariff for a PPP projects is fixed based on then prevailing SoR with annual escalations and periodic revision is not considered. Accordingly the Port Trust may not send the proposal for revision of SoR for such land to TAMP in the cases where such revision will affect/affects the viability of the project as envisaged in the Project Report.

The above matter was discussed in the meeting and it was decided to retain Appendix 13 (A) (i) as it is without any change in DCA. However the same may be reviewed after signing of Concession Agreement as and when notification is issued by Ministry of Shipping.

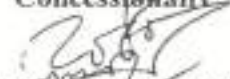
**NMPT
Concessioning Authority**


Shri Paritosh Bala, C.E. (C)


Shri Pradeep Kumar Kar, FA&CAO (i/C)


Shri Harinath A. V, Dy.C.E.(C)

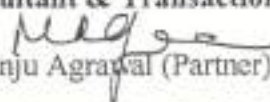
**M/s. JSW
Concessionaire**


Shri C. P. Somani (AGM- BD)


Shri Dilip Shetty (AGM- BD)

M/s. Gianendar & Associates,

Financial Consultant & Transaction Advisor


Smt. Manju Agrawal (Partner)



Also present were Shri. Satish Honnakatte, CME, Shri Y. R. Belegal TM, Shri Sathish Kumar, Sr. DTM, Shri Shashikanth P Kodi, EE (MW), Shri Deepraj S Ambat, DM (Corp,Legal) and Shri Vivek C.T, A.E. (C).



ನವ ಮಂಗಳೂರು ಬಂದರು ಮಂಡಳಿ
नव मंगलूर पत्तन न्यास
NEW MANGALORE PORT TRUST

Govt. of India (Ministry of Shipping)
ಪಾನ್‌ಬೂರು ಪಂಚುರ್ Panambur / ಮಂಗಳೂರು ಮಾಗ್ಲು Mangalore - 575010.



No. 26/14/RFP-SFC-DCA/B.14/CE(C)/2019-20/TS

Date: 22/01/2020

To,

M/s. JSW Infrastructure Limited,
JSW Center, Bandra Kurla Complex,
Bandra (East), Mumbai-400051
devki.nandan@jsw.in
FAX: 022 4286 3000

(Kind Attention : Shri. Devki Nandan, Sr. Vice president (Business Development))

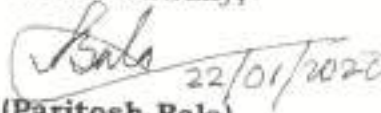
Sir,

Sub: Mechanization of Berth No. 14 for Handling Containers and other Cargo on DBFOT Basis at New Mangalore Port Trust – Signing of Concession Agreement – Reg.

In connection with the subject work, the date of signing the Concession Agreement has been fixed on 27.01.2020. You are requested to send your authorized signatory to sign the agreement as per schedule.

Thanking you

Yours faithfully,


(Paritosh Bala)

Chief Engineer (Civil)


22/01/2020
DMP

ದೂರವಾರ್ಡ್ : ಕಛೇರಿ : 0824 - 2407341

ಫ್ಯಾಕ್ಸ್ : 0824- 2408390

ಫೋನ್ : ಕಾರ್ಯಾಲಯ : 0824 - 2407341

ಫೇಕ್ಸ್ : 0824 - 2408390

Phone : Office : 2407341 (18 Lines)

Fax : 0824-2408390

ಶಿಪ್ ಮೆಂಟೆನ್ಯಾನ್ಸ್ ಟ್ರಸ್ಟ್ ಮಂಗಳೂರು

Email

chiefengineer@nmpt.gov.in

Fwd: JSWIL - NMPT - Signing of Concession Agreement Berth No 14

From : Paritosh Bala <chiefengineer@nmpt.gov.in> Fri, Dec 27, 2019 10:26 AM
Subject : Fwd: JSWIL - NMPT - Signing of Concession Agreement Berth No 14 📎 5 attachments
To : Shashidhar Koppad <shashidhar.koppad@nmpt.gov.in>, Vivek C.T <vivek.ct@nmpt.gov.in>

PFA for early action.

CE(C)

From: "dilip shetty" <dilip.shetty@jsw.in>
To: "Paritosh Bala" <chiefengineer@nmpt.gov.in>
Cc: "devki nandan" <devki.nandan@jsw.in>, "chandra somani" <chandra.somani@jsw.in>
Sent: Thursday, December 26, 2019 7:13:48 PM
Subject: JSWIL - NMPT - Signing of Concession Agreement Berth No 14

Dear Sir

With reference to your email for signing of concession agreement. We have below observations and changes required to be incorporated in the Concession Agreement to be signed.

- 1) Article 1.1 Definitions Applicant JSW Infrastructure Private Limited to be replaced by JSW Infrastructure Limited.
- 2) Article 1.1 Definitions "Management Contractor" The space left blank to mention JSW Infrastructure Limited.

Further as per Minutes of Meeting dated 27th November 2019, we hereby undertake that we will infuse requisite equity in the SPV to pay off the related party liability and make SPV as Net Worth positive. Attached undertaking copy for your reference.

We are ready for signing of Concession Agreement preferably on 3rd January, 2020 or any suitable date. Please confirm.

Thanks & Regards,

Dilip Shetty | AGM-Business Development | JSW Infrastructure

JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400051 | Maharashtra | India

M +91 8291024255 | D 22 4286 2137

www.jsw.in

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----- Forwarded message -----

From: **Paritosh Bala** <chiefengineer@nmpt.gov.in>

Regd. Office : JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
CIN. : U45200MH2006PLC161268
Phone : +91 22 4286 1000
Fax : +91 22 4286 3000
Website : www.jsw.in

Date: 26th December, 2019

To,
Chief Engineer (Civil),
New Mangalore Port Trust,
Panambur, Mangalore- 575010

Sub: 1) Mechanization of Berth No. 14 for handling Containers and other cargo on DBFOT basis at New Mangalore Port Trust (NMPT)- Signing of Concession Agreement.

2) Undertaking for infusion of Equity to make SPV as Net Worth positive and pay off the Related party liability.

Ref: Minutes of Meeting dated 27th November, 2019

Dear Sir,

This is with reference to discussion had during the meeting held on 27th November, 2019 and its Minutes of Meeting, one of the discussion point was that a Related party liability of Rs. 13.72 Lacs is appearing in the financial statement of SPV as of 31st March, 2019 and Net worth was negative. We would like to mention that we have already initiated process to increase the Authorised Share Capital of SPV from Rs. 1 Lakh to Rs. 10 Crore and submitted the requisite form to ROC (Form attached herewith- **Annexure A**).

We further undertake that we will infuse requisite equity in the SPV within 30 days from the date of this letter to pay off the Related party liability and make SPV as Net Worth positive.

Considering above, we request you to consider this condition as "Complied" and process for signing of Concession Agreement preferably on 3rd January, 2020 or any suitable date.

Thanking you,

Yours Faithfully,

For JSW Infrastructure Limited,



25/10/20
01/01/20
02/GEC
01/01/20

Name: Devki Nandan
Designation: Sr. Vice President- Business Development and M&A

Sri Vinod CT, CE
Bala 21/12/2019

Encl: Annexure- A



JSW representation is accepted.
Megha
7.01.2020



FORM NO. SH-7

[Pursuant to section 64(1) of the Companies Act, 2013 and pursuant to rule 63 of the Companies Rules, 2014]



Notice to Registrar of any alteration of share capital

Form language English Hindi

Refer the instruction kit for filing the form.

1.(a)* Corporate identity number (CIN) of the company
(b) Global location number (GLN) of company

2.(a) Name of the company

(b) Address of the registered office of the company

(c) *email Id of the company

3. *Purpose of the form
 Increase in share capital independently by company Increase in number of members
 Increase in share capital with Central Government order Consolidation or division etc.
 Redemption of redeemable preference shares

4. In accordance with section 61(1) of the Companies Act, 2013, that by Ordinary Special resolution at the meeting of the members of the company held on (DD/MM/YYYY)

(a)(i) The authorised share capital of the company has been increased from

Existing	(in Rs.)	<input type="text" value="100,000.00"/>
Revised	(in Rs.)	<input type="text" value="100,000,000"/>
Difference (addition)	(in Rs.)	<input type="text" value="99,900,000.00"/>

6. The additional capital (taking into consideration the addition above) is divided as follows

(a) Number of equity shares	<input type="text" value="9,990,000"/>	Total amount of equity shares (in Rs.)	<input type="text" value="99,900,000.00"/>
(b) Number of preference shares	<input type="text" value="0"/>	Total amount of preference shares	<input type="text"/>
Total addition	(in Rs.) <input type="text" value="99,900,000.00"/>	(in Rs.)	

The conditions (e.g. voting rights, dividend rights, winding-up rights, etc.) subject to which new shares have been issued, are as follows



9. Revised capital structure after taking into consideration the changes vide points 4, 5, 6 and 8 above

(a) Authorised capital of the company (in Rs.)

Break up of Authorised capital

Number of equity shares	<input type="text" value="10,000,000"/>	Total amount of equity shares (in Rs.)	<input type="text" value="100,000,000.00"/>
Nominal amount per equity share	<input type="text" value="10"/>		
Number of preference shares	<input type="text" value="0"/>	Total amount of preference shares (in Rs.)	<input type="text" value="0.00"/>
Nominal amount per preference share	<input type="text" value="0"/>		
Number of unclassified shares	<input type="text"/>	Total amount of unclassified shares (inRs.)	<input type="text"/>

(b) Issued capital of the company (in Rs.)

Break up of Issued capital

Number of equity shares	<input type="text" value="10,000"/>	Total amount of equity shares (in Rs.) (in Rs.)	<input type="text" value="100,000.00"/>
Nominal amount per equity share	<input type="text" value="10"/>		
Number of preference shares	<input type="text"/>	Total amount of preference shares	<input type="text"/>
Nominal amount per preference share	<input type="text"/>		



(c) Subscribed capital of the company (in Rs.)

Break up of Subscribed capital

Number of equity shares Total amount of equity shares (in Rs.)

Nominal amount per equity share

Number of preference shares Total amount of preference shares (in Rs.)

Nominal amount per preference share

(d) Paid up capital of the company (in Rs.)

Break up of Paid up capital

Number of equity shares Total amount of equity shares (in Rs.)

Nominal amount per equity share

Number of preference shares Total amount of preference shares (in Rs.)

Nominal amount per preference share

10. Whether articles of association have been altered Yes No

11. Particulars of payment of stamp duty (Refer instruction kit for details before filling the particulars)

(a) State or Union territory in respect of which stamp duty is paid or to be paid

(b) Whether stamp duty is to be paid electronically through MCA21 system Yes No Not applicable

(i) Details of stamp duty to be paid

Amount of stamp duty to be paid (in Rs.)

(j) Provide details of stamp duty already paid

Type of document/Particulars	Form SH-7
Total amount of stamps or stamp paper (in Rs.)	<input type="text"/>



12. In case maximum stamp duty payable has already been paid, provide details of form(s) filed earlier (SRN or receipt number, form number, date of filing, amount of stamp duty paid)

Attachments

- (1) Copy of the resolution for alteration of capital;
- (5) Altered memorandum of association;
- (8) Optional attachments ,if any

Attach

Attach

Attach

List of attachments

EGM Res_ Inc in Auth Cap Memorandum _ New.pdf

Remove attachment

Declaration

I, Ritesh Udeshi , a

Director of the company declare that all the requirements of the Companies Act, 2013 and the rules made thereunder have been complied with. I am authorized by the board of directors to give this declaration and to sign and submit this Form. It is further declared and verified that

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the promoters subscribing to the Memorandum of Association and Articles of Association.
2. All the required attachments have been completely, correctly and legibly attached to this form.
3. I further declare that the company has paid correct stamp duty as per applicable Stamp Act.

To be digitally signed by

* Designation Director



* Director identification number of the director; or DIN or PAN of the manager or CEO or CFO; or Membership number of the company secretary

06793079

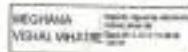


Certificate by practicing professional

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/ certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

- i. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order.
- ii. All the required attachments have been completely and legibly attached to this form.

***To be digitally signed by**



- Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or
- Company secretary (in whole-time practice)

Whether associate or fellow Associate Fellow

Membership number or Certificate of practice number

18352

Certificate of practice number

7499

Note: Attention is drawn to the provisions of section 448 and 449 of the Companies Act, 2013 which provide for punishment for false statement and punishment for false evidence respectively.

Modify

Check Form

Prescrutiny

Submit

For office use only:

eForm Service request number (SRN)

eForm filing date

(DD/MM/YYYY)

This e-form is hereby registered

Digital signature of the authorizing officer

Confirm submission

Date of signing

(DDMM/YYYY)





JSW MANGALORE CONTAINER TERMINAL PVT. LTD.
(formerly known as JSW Terminal (Mormugao) Pvt. Ltd.)
Regd. Office: Port Users Complex, 1st Floor, Mormugao,
Harbour, Goa 403803
Phone : 0832-252300, Fax : 0832-2523001
CIN: U74900GA2014PTC007400
Website: www.jsw.com Email: info.mombay@jsw.com

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE EXTRA ORDINARY GENERAL MEETING OF SHAREHOLDERS OF JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED HELD ON NOVEMBER 25, 2019 AT JSW CENTRE, BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI 400051.

"RESOLVED THAT in accordance with the provision of section 13, 61 and all other applicable provisions, if any, of the Companies Act, 2013 (including any statutory modification(s) or re-enactments thereof, for the time being in force), the existing Authorised Share Capital of the Company i.e. Rs 1,00,000 (Rupees One Lakh Only) divided into 10,000 (Ten Thousand Only) Equity Shares of Rs 10 each, be increased to Rs 10,00,00,000 (Rupees Ten Crores Only) divided into 1,00,00,000 (One Crore Only) Equity Shares of Rs 10 each and that Clause V of the Memorandum of Association of the Company relating to the share capital be and is hereby altered by deleting the same and substituting in its place the following as new Clause V".

"The Authorised Share Capital of the Company is Rs 10,00,00,000 (Rupees Ten Crore Only) divided into 1,00,00,000 (One Crore Only) Equity Shares of Rs 10 each".

CERTIFIED TRUE COPY

For JSW Mangalore Container Terminal Private Limited

Ritesh Udeshi (DIN: 06793079)

Director

**Address: C/407 Patel Shopping Centre Bldg, Chandavarkar Road,
Above Rajmahal hotel, Borivali West, Mumbai - 400092**





JSW MANGALORE CONTAINER TERMINAL PVT. LTD.
(Formerly known as JSW Terminal (Mormugao) Pvt. Ltd.)
Regd. Office: Port Users Complex, 1st Floor, Mormugao,
Harbour, Goa 403803
Phone : 0832-252300, Fax : 0832-2523001
CIN: U74900GA2014PTC007400
Website: www.jsw.in Email: info@mombat.jsw.in

EXPLANATORY STATEMENT (PURSUANT TO SECTION 102(1) OF THE COMPANIES ACT, 2013)

Members are aware that the Company is presently in the process of development, operate, handle and maintenance of Container Terminal at Berth No.14 on Design, Build, Finance, Operate, and Transfer (DBFOT) basis under Public Private Partnership Model (PPP) for handling containers and other clean cargo at New Mangalore Port. In view of the requirements to meet the Project cost and Working Capital, it is proposed to raise the desired resources through the issue of Equity Shares.

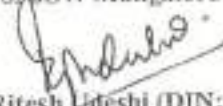
The Company's present Equity Shares is Rs 1,00,000 (Rupees One Lakh Only) divided into 10,000 (Ten Thousand Only) Equity Shares of Rs 10 each and thus is required to raise further equity capital for facilitating the implementation of the above said project. In order to enable the Company to issue equity shares for financing the above said project it is necessary to enhance the existing authorized capital of the Company from Rs 1,00,000 to Rs 10,00,00,000 by creation of additional 99,90,000 (Ninety Nine Lakh Ninety Thousand Only) shares of Rs 10 each aggregating to Rs 9,99,00,000 (Nine Crore Ninety Nine Lakhs Only).

For increasing the authorised share capital as aforesaid and making the necessary amendments thereto in the Capital Clause of the Memorandum of Association of the Company, the Company is required to obtain the approval of its shareholders by way of Ordinary Resolution under Section 13 and 61 of the Companies Act, 2013.

None of the Directors/Managers/Key Managerial Personnel or relatives of any of the Directors/Managers/Key Managerial Personnel of your Company are in any way concerned or interested in the resolution set out in the notice.

The Directors recommend the resolution for your approval.

Certified True Copy
For JSW Mangalore Container Terminal Private Limited.


Ritesh Udeshi (DIN: 06793079)
Director

Address: C/407 Patel Shopping Centre Bldg, Chandavarkar Road,
Above Rajmahal hotel, Borivali West, Mumbai - 400092

