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 Concessioning Authority, on behalf of the Concessioning Authority and remit the same to the Concessioning Authority. Provided, the Concessionaire shall be duly authorized by the Concessioning Authority or such other authority as may be competent in this regard, for the purpose of such collection.

ARTICLE-9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1. License Fee

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

License Fee = A x 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) x S; Where

NEW MANGALORE PORT TRUST PANAMBUR MANGALORE 575010

NEW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED JSW

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

(b) 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 Concessioning Authority to the Concessionaire in accordance with Article 7.1 (iii) the terms, conditions and covenants including on payment of rates specified by the Concessioning 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 Concessioning Authority a financial statement including quantity (MT) of cargo/TEUs handled for every 6 (six) monthly period ending 30th September and 31st

NEW MANGALORE PORT TRUST PANAMBUR MANGALORE 575010

March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the quantity (MT) of cargo/TEUs handled and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioning Authority and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the 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 6% (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 Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5. Escrow Account

(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;

(vi) towards payment of Royalty and other sums payable to the Concessioning Authority and liquidated damages, if any;

(vii) towards any reserve requirements in accordance with the Financing Documents;

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

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

NEW MANGALORE PORT TRUST
PANAMBUR MANGALORE 575010

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

ARTICLE-10

ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1. Ownership of Assets

(a) Land and Water Area

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

(b) Assets created or provided by the Concessionaire

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

10.2. Permitted Charge on Assets

The Concessionaire shall be entitled to create a charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of 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 Concessioning Authority to the Senior Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

NEW MANGALORE PORT TRUST PANAMBUR MANGALORE 575010

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/theirAssociates 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.

NEW MANGALORE PORT TRUST PANAMBUR MANGALORE 575010

JSW MANGALORE CONTAINER TERMINAL PRIVATE LIMITED

11.3. Constituent Documents

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

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

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