

**CONCESSION AGREEMENT**

**BETWEEN**

**BOARD OF TRUSTEES FOR KANDLA PORT TRUST (THE CONCESSIONING AUTHORITY)**

**AND**

**KANDLA OIL TERMINAL PRIVATE LIMITED LTD (THE CONCESSIONAIRE)**

**FOR**

**DEVELOPMENT OF OIL JETTY TO HANDLE LIQUID CARGO AND SHIP BUNKERING  
TERMINAL AT OLD KANDLA**

**ON BUILD, OPERATE AND TRANSFER (BOT) BASIS**

**DATED 16<sup>th</sup> NOVEMBER 2013**

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## **CONCESSION AGREEMENT**

**THIS CONCESSION AGREEMENT** is made at Bengaluru, on this the 16<sup>th</sup> day of November 2013

**BETWEEN:**

BOARD OF TRUSTEES for KANDLAPORT, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Gandhidham, Kutch, Gujarat – 370 201, 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**

KANDLA OIL TERMINAL PRIVATE LIMITED, a company registered under the Companies Act, 1956, and having its registered office at Neeladri" III Floor, 9, Cenotaph Road, Alwarpet, Chennai 600018 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 “Development of Oil Jetty to Handle Liquid Cargo and Ship Bunkering Terminal at Old Kandla on BOT basis under PPP mode” through private sector participation;
- (B) In or about August 2012, the Concessioneing Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to pre-qualify 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 27/11/2012 submitted by the Applicant in accordance with the Request for Qualification;
- (D) The Concessioneing Authority, after evaluating all the applications, pre-qualified 10 number of applicants including the Applicant 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 provisionally pre-qualified applicants including the one submitted by the Applicant;
- (F) The Concessioneing Authority, after evaluating all the proposals received by it from the pre-qualified applicants, accepted the proposal referred to in recital “E” above submitted by the Applicant and communicated its acceptance to the Applicant vide Letter of Intent for Award of Concession dated 26/06/2013;
- (G) The Applicant has/ incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 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: -

**“Access Channel (or Entrance Channel)”** shall have the meaning as per Indian Admiralty Chart No. 2080 for Gulf of Kutch, Eastern portion issued by National Hydrographic Department, Deharadun.

Access Channel is about 23 km long from outer Tuna buoy in Gulf of Kutch to mouth of Kandla Creek. Width of Access Channel is about 300-350 meters.”

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

**“Additional Auditor”** has the meaning ascribed to it in Article 9.4.

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

**“Affiliate”** means, with respect to any Party and/or with respect to the Applicant, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Applicant . 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 means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Applicant whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

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

**“Appendix”** means the schedules, supplements or documents, appended to this Agreement.

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

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

**“Applicant”** means M/s IMC Limited, a company registered under the Companies Act, 1956, and having its registered office at \_ Neeladri" III Floor, 9, Cenotaph Road, Alwarpet, Chennai 600018.

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

**“Bid Security”** means the bank guarantee of an amount of Rs. 2.35 Crores dated 28/06/2013 bearing No. 084813IGFIN0018 drawn by Andhra Bank, Chennai furnished by the Applicant alongwith its Bid.

**“Board”** means the Board of Trustees for Kandla Port Trust.

**“Book Value”** means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessioneing Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessioneing Authority agrees to take over, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

**“Bunker/Bunkers”** means various types of bunker fuels.

**“Change in Law”** shall have the meaning set out under Article 13.1 of this

Agreement.

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

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

**“Completion Certificate”** shall have the meaning assigned to it under Article 6.3.

**“Concession”** means the Concession granted by the Concessioneing 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.

**“Concessioneing Authority Event of Default”** shall have the meaning as set out under Article 15.1(b).

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

**“Concession Period”** means the period of the Concession specified in Article 2.2 of this Agreement.

**“Conditions Precedent”** shall mean the conditions prescribed in Article 3 of this Agreement.

**“Construction Phase”** means the period from the Date of Award of Concession to the Date of Commercial Operation.

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

**“Construction Standards”** means the construction standards set out in the annexure to Appendix 4.

**“Consultation Notice”** has the meaning ascribed to it in Article 15.3.

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

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

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

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

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

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

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

**“Encumbrance”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar

arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Port's Assets/Project Facilities and Services.

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

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

**"Equity"** means the paid up share capital of the Concessionaire representing the equity component of the Actual Project Cost, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

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

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

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

**"Estimated Project Cost"** means the sum of Rs.233.50 Crores (Rupees Two Hundred and Thirty Three Crores and Fifty Lakhs only) being the cost of the Project as estimated by the Concessioneing Authority and disclosed in the Request for Proposal.

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

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

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

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

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

**“Financial Year”** means any twelve month period commencing from 1<sup>st</sup> April and ending on 31<sup>st</sup> March.

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

**“Financing Plan”** means the financing plan as envisaged under the Financing Documents for financing the cost to be incurred for implementing the Project submitted by the Concessionaire in accordance with Article 3.1(a)(vii).

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

**“GoI”** means the Government of India.

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

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

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

**“Independent Engineer”** means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the

Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

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

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

**“Kandla Creek”** is a dynamic water mass situated between Sara Creek and Phang Creek at its northern confluence and the Kandla estuary in the south limit in a North-South direction between latitude 22°-58'N and 23°-04' N. It has a length of about 10.5 kms and serves as the natural inner harbour for the Port of Kandla. The western bank of Kandla Creek is the mainland comprising of the Port infrastructure and the Eastern bank comprises the saline natural island Sathsaida bet. The Infrastructure of Kandla Port including the dry cargo berths, floating craft jetties, bunder basin and floating dry dock jetties are situated along the southern half and oil jetties are established along the northern half of Kandla Creek. The map showing Kandla Creek is attached as Annex to Appendix 1.

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

**“License Fee”** shall have the meaning assigned to it under Article 9.1(a).

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

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

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

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

**“Month”** means the calendar month as per the Gregorian calendar.



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

**“Navigational Channel”** means sea navigation channel ranging from OTB to Oil Jetty Complex which includes the Access Channel also as per the Drawing in Annex to Appendix 1.

**“Non Political Event”** means the Force Majeure Events set out in Article 14.2.

**“Oil Jetty Complex”** means the group of liquid cargo handling jetties called Oil Jetties including existing Oil Jetty No. 1 to 6 developed at Kandla Port Trust within the Kandla Creek and any other such liquid cargo handling jetty/jetties to be developed towards north or south of this group of jetties as per the Drawing in Annex to Appendix 1.

**“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

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

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

**“Other Events”** means the Force Majeure Events set out in Article 14.4.

**“Outer Tuna Buoy”** means the area outside Kandla Creek located at approx. 22°50'37" N 70°6'50" E approximately at distance of 27-28 Km from almost the centre of the Oil Jetty Complex as where the vessels visiting the port are kept in waiting for their turn to berth for loading/unloading of cargo.

**“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, 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 limits prescribed in the Port limit notification for the Kandla Port Trust amended, supplemented, or replaced 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 3.39 MMTPA of liquid cargo including bunker fuel per annum.

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

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

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

**“Project Schedule”** means the Appendix 5 hereto.

**“Project Site”** means the area demarcated in Appendix 1 including the waterfront, existing berth, land 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.

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

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

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

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

**“Request for Proposal” or “RFP”** means the Request for Proposal dated 12/02/2013 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 27.08.2012 issued by the Concessioneing Authority inviting applications in accordance therewith for pre-qualifying 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 alongwith the statement of conditions with respect thereto framed from time to time and notified by TAMP or such other competent authority under the provisions of MPT Act, as applicable.

**“Scheduled Project Completion Date”** means the day of completion of 24 calendar months after Date of Award of Concession.

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

**“Special Audit”** shall have the meaning assigned to it under Article 9.4.

**“Statutory Auditors”** means a firm of chartered accountants appointed in terms of Section 224 of the Companies Act, 1956 and acting as the statutory auditors of the Concessionaire.

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

**“SBI PLR”** means the prime lending rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement.

**“TAMP”** means Tariff Authority for Major Ports established under the MPT Act.

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

Services.

**“Tank Farm”** means Group of Tanks and all requisite allied facilities for Storage of Liquid Cargo including Bunker Fuels.

**“Tariff Notification”** means the notifications for Case No. TAMP/5/2013-KPT dated 22nd February 2013 notified vide Gazette No. 125 dated 6<sup>th</sup> May, and its amendment dated 9<sup>th</sup> May, 2013, and notified vide Gazette No.198 dated 24<sup>th</sup> July 2013 setting out *inter alia* the Tariff and shall include any revisions thereof.

**“Termination Notice”** means the termination notice issued pursuant to Article 16.1 hereof.

**“Termination Period”** shall have the meaning as set out under Article 16.1 hereof.

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

**“The Port”** means Kandla Port.

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

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

**“Transaction Documents”** means collectively the Project Contracts and the Financing Documents.

**“Zero Panel”** means first panel starting from north side of existing dry cargo berths at Kandla of Kandla Port Trust.

## **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.

**“DWT”** means Dead Weight Tonnage

**“FEM”** means Federation of Equipment Manufacturers.

**“GOI”** means Government of India

**“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.

"KPT" means Kandla Port Trust

**"OTB" means Outer Tuna Buoy**

**"PGVCL" means Paschim Gujarat Vij Company Limited**

**"RCC" means Reinforced Cement Concrete**

**"ASTM" means American Society for Testing and Materials**

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

**"m" means Metre, the unit of length.**

**"mm" means Millimetre, the unit of length.**

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

**"MMTPA" means Million Metric Tonnes per Annum.**

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

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

**"OISD" means Oil Industry Safety Directorate.**

**"SOR" means Scale of Rates of Kandla Port**

**"T" means tonne**

**"TAMP" means Tariff Authority of Major Ports**

**"VAT" means Value Added Tax.**

### **1.3 Interpretations**

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid documents, *inter alia* including the RFP and RFQ documents, issued by the 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;
  - (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
  - (k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
  - (l) unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
  - (m) unless otherwise specified, any interest to be calculated and payable under

this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and

- (n) any word or expression used in this Agreement , unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

#### **1.4 Measurements and Arithmetic Conventions**

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

#### **1.5 Ambiguities and Discrepancies**

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

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

## **ARTICLE 2**

### **CONCESSION AND PORT ASSETS**

#### **2.1 Concession**

In consideration of the Concessionaire agreeing to pay to the Concessioneing Authority (a) the License Fee and (b) Royalty, (c) Pro-rata Cost of Capital and Maintenance Dredging to be carried out from Zero Panel to Oil Jetty Complex and performing its obligations as set out in this Agreement, the Concessioneing Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project/ Project Facilities and Services.

#### **2.2 Concession Period**

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

Provided that: -

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

#### **2.3 Acceptance of the Concession**

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

conceptualize, design, engineer, finance, construct, equip, operate, maintain and replace the Project/ Project Facilities and Services.

#### **2.4 Port's Assets**

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

#### **2.5 Use of Port's Assets**

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

#### **2.6 Information about Project Site and Port's Assets**

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioneing Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioneing Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioneing Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the



Concessioneing Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

## **2.7 Acceptance of the Port Assets**

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

- (a) inspected the Project Site/Port's Assets, including the berths and all structures thereat and its surroundings;
- (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and
- (c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

## **2.8 Peaceful Occupation**

The Concessioneing 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 Concessioneing 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) intentionally left blank
- (vi) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
- (vii) Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessioneing Authority under Article 3.1 (b) hereunder;

(viii) Procuring and furnishing the following confirmations, in original, from the Applicant/:

- (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/ 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 and/or the Port's Assets for the purposes of the Project;

(a) Payment of License fee by the Concessionaire to the Concessioneing Authority as per the article 9.1 of the agreement (i.e. Payment of License Fee in advance before taking the physical possession of the Project Site and Port Assets) shall enable the Concessioneing Authority to fulfill the Condition Precedent 3.1 (b) (ii). To make it more clear, the concessionaire shall deposit the License fee in advance to the Concessioneing Authority before taking over the physical possession of the project site and/or the port's assets from the Concessioneing Authority for the purposes of the project.

**3.2** The aforesaid Conditions Precedent shall be complied with within 180 (One Hundred and Eighty) Days of the date of Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

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

**3.4** If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the 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 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 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 fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until 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. 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 Gandhidham, Kutch 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. 11.68 Crores (Eleven Crores and Sixty Eight Lakhs 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. 11.68 Crores (Rupees Eleven Crores and Sixty Eight Lakhs 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 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

## **ARTICLE 5 INDEPENDENT ENGINEER**

### **5.1 Independent Engineer**

- (a) The Independent Engineer shall be selected through a tender process. The Concessioning 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 Concessioning 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 Concessioning Authority does not receive any objection from the Concessionaire with reasons therefore, the Concessioning 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 Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- (b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7.
- (c) The costs and expenses of the Independent Engineer shall be borne by the Concessioning Authority and Concessionaire, equally.
- (d) If the Concessioning 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 Concessioning Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.

- (e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.



## **ARTICLE 6**

### **PROJECT IMPLEMENTATION**

#### **6.1 Preparation of Designs and Drawings**

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

#### **6.2 Review of the Designs and Drawings**

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

- (f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.
- (g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- (h) Any review of the Designs and Drawings conducted by the Concessioneing Authority is solely for the Concessioneing Authority's own information and that by conducting such review, the Concessioneing Authority does not accept any responsibility for the same.
- (i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioneing Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof.

### **6.3 Construction Phase**

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

### **6.4 Obligations of the Concessionaire**

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

- (a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.
- (b) engage professionally competent Persons for project management and

- construction and ensure that all works are carried out in compliance with the Construction Standards;
- (c) give written notice to the 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 Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
  - (f) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
  - (g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and
  - (h) to ensure safe and timely construction and completion of the

Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

- (i) carry out the Capital Dredging to achieve -14.1 m Depth alongside the Jetty and 13 m Draft at its approach up to navigational channel in the Kandla Creek. Moreover, it shall be the obligation of the Concessionaire to bear the cost, on pro-rata basis, of the Capital dredging for deepening of Navigational Channel up to 13 m Draft from Zero Panel to Oil Jetty Complex.

*Note: In this Agreement, the references made to Draft to be made available would be considered as the maximum draft as per average rise of the tide. However, this average is not available during the entire month. On days when the height of tide is below average, the permissible drafts will not be available and the corresponding available drafts will be declared from time to time (on quarterly basis). Also, there is always a difference in permissible drafts between day & night tides. Night drafts are lower based on the safety concern. The same will also be declared from time to time.*

## **6.5 Obligations of the Concessioning Authority**

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

- (a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- (b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that

- the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement;
- (c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;
  - (d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and
  - (e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.
  - (f) carry out capital dredging in Access Channel and Navigational Channel to make available Draft of 13 m.

## **6.6 Suspension of Works**

- (a) Upon recommendation of the Independent Engineer to this effect, the Concessioneing 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 Concessioneing 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 Concessioneing Authority and thereupon represent to the Concessioneing 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 Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

#### **6.7 Issue of Completion Certificate**

- (a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards (“**the Tests**”). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the 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, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;

- (e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

## 6.8 Change of Scope

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

- cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Estimated Project Cost ;
- b) If the 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 thereunder **(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 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 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 Concessioneing Authority liquidated damages at the rate of [0.1% (zero point one percent)] of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioneing 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 Concessioneing Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioneing Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

**ARTICLE 7**  
**OPERATIONS & MAINTENANCE**

**7.1 (a) Obligations of the Concessionaire**

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

**(i) Berth and Terminal Operations:**

The Concessionaire shall:

- a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;
- b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;
- c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;
- d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;
- e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic 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 Concessioning Authority or other agencies;
- g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
- h) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services 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

discriminatory practice against any user or potential user thereof;

- i) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;
- j) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;
- k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioneing Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and
- l) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.
- m) carry out maintenance dredging to maintain -14.1 m Depth alongside the Jetty and 13 m Draft from its approach up to Navigational Channel in the Kandla Creek. Moreover, it shall be the Obligation of the Concessionaire to bear the cost, on pro-rata basis, of the maintenance dredging for deepening of navigational channel up to 13 m Draft from Zero Panel to Oil Jetty Complex.
- n) generally use the front side of the wharf for handling liquid cargo through vessels whereas the rear side of wharf for handling Bunkers through barges. It is made clear to avoid any doubt that the front side of the Jetty would have the priority for vessels over the barges.
- o) carry out capital or maintenance dredging operations, if any that may be required to ensure the Draft/Depth to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services and/or any other port infrastructure and/or operations;

**(ii) Repairs and Maintenance**

The Concessionaire shall at its own cost:

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

**(iii) Replacement of Equipment**

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

**(iv) Repairs, Replacement or Restoration**

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

**(v) Removal / Replacement of Assets**

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

**(vi) Payments to the Concessioneing Authority**

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

**(vii) Access for Inspection**

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

**(x) Security Arrangements**

The Concessionaire on his own interface with the Ministry of Home affairs, to obtain the required Number of Central Industrial Security Forces (CISF) personnel as are required for security of the Project Site/Port Assets and with respect to the Project provided 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. The Concessionaire may make additional arrangements for the required security personnel as watch and ward for the Project Site/ Port Assets in addition to the CISF personnel allotted to the Project Site/ Port Assets by the Ministry of Home Affairs. The costs and expenses in regard to the whole of the security including the CISF personnel shall be borne by the concessionaire.

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

**(xiii) Indemnity Against Claims for Loss of Goods**

Notwithstanding anything contained in the MPT Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "**Action**") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioneing Authority, its officers, employees, agents and representatives (the "**Indemnitees**") 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 Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 7 [seven] Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees 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 Indemnitees 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 Indemnitees 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 Indemnitees 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 Indemnitees 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.



**(b) Rights of Concessionaire**

**(i) Preferential and Priority Berthing**

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

**(ii) Unclaimed cargo**

The Concessionaire may at its cost:

- (a) after obtaining prior written approval of the Commissioner of Customs or other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and always subject to provisions of MPT Act and other laws in this regard.
- (b) institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessioneing Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

**(c) Obligations of Concessioneing Authority**

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

**(i) Marine and Port Services**

The Concessioneing 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 entrance channel and Navigational Channel Draft at 13 m;
- (c) waterside safety and safety of navigation;



- (d) deleted;
- (e) deleted
- (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) deleted
- (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 Concessioneing Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

## **7.2 Utilities and Services**

The Concessioneing 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 Concessioneing Authority:

(a) the power made available shall be as received by the Concessioneing Authority from PGVCL . The take off point for electricity shall be from the sub station near Main Gate of Oil Jetty Complex .Concessionaire requiring high voltage power supply shall receive it from 11 KV substation of KPT.

(b) the water made available shall be as received by the Concessioneing Authority from existing water pipeline passing near Old Kandla Estate Office. . The take off point for water shall be the nearest available water line;

- (c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioneing Authority, install meters to measure the consumption of power and water. The Concessioneing Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;
- (d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

### **7.3 Liability for shortfall in performance**

In the event the 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 Levy and Recovery of the Tariff

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

**8.1.2** The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or other relief from the Concessioneing Authority or any Government Instrumentality, except in accordance with the express provisions of Agreement. The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff notification issued by TAMP and agrees that the Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire. As per para 14.5 of the approved Tariff Order, ***“The upfront tariff approved by TAMP is with reference to the handling of certain liquid cargo at the facility. If there is any change in the cargo profile, the upfront tariff will have to be reviewed.”***

#### 8.2 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 Concessioneing Authority, on behalf of the Concessioneing Authority and remit the same to the Concessioneing Authority. Provided, the Concessionaire shall be duly authorized by the Concessioneing 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 sum of Rs 3.45 Crores (Rupees Three Crores and Forty Five Lakhs Only) which includes License Fee for Land at Rs. 3.14 Crores (i.e. calculated as 65508 Sqm x Rs. 39.94 per Sqm per Month (as of January 2013 which may get revised from time to time as per Scale of Rates of KPT) x 12 Months) and License Fee for Waterfront Area at Rs. 0.31 Crores (i.e. calculated as 13110 Sqm x Rs. 19.97 per Sqm per Month (as of January 2013 which may get revised from time to time as per Scale of Rates of KPT) (the "**License Fee**"). Such amount shall be paid by the Concessionaire annually in advance. The License fee shall be escalated on yearly basis as per the Land Policy for Major Ports issued by Ministry from time to time. The present yearly escalation rate is 2%. It is further made clear that the amount for the License Fee for land and water front for every year shall be calculated along with escalation as described above. To avoid any confusion the license fee is calculated on the Project Site/Port Assets and waterfront licensed to the concessionaire by the Concessioning Authority. License fee has been determined considering the Chapter VI, Category G of Scale of Rates of KPT as per the categorical instruction of TAMP. License Fee shall be payable from the date of handing over of physical possession of the Project Site and Port Assets.
- (b) The Concessionaire shall pay, within 15 days of as and when demanded by the Concessioning Authority in written, the cost, on pro-rata basis, for Capital and maintenance dredging for deepening of navigational channel up to 13 m Draft from Zero Panel to Oil Jetty Complex.

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

## **9.2 Payments of Royalty**

- (a) The Concessionaire shall pay to the Concessioneing Authority Royalty per Month equivalent to 27.90 % (Twenty Seven Point Nine Zero percent) of the Gross Revenue chargeable by the Concessionaire (“the **Royalty**”).
- (b) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferments, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue. Further, in computing the Gross Revenue, income from interest, sale of assets, amounts received by the Concessionaire by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and cesses in respect to the Project Facilities and Services, if any collected and paid to any Government Authority shall also be ignored.
- (c) Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.
- (d) The payment of Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services, and shall be irrespective of Date of Commercial Operation.
- (e) Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

### **9.3 Utilities or Services**

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

The Concessionaire shall further make payments to reimburse the Concessioneing Authority in regard to the expenses made and payments undertaken by the Concessioneing Authority for the purposes of studies and investigations undertaken by the Concessioneing Authority at the Project Site and Port Assets till the date of Award of Concession and the preparation of Detailed Project Report, if any. In the event that the Concessioneing Authority conducts any studies or investigations at the Project Site and Port Assets at any time during the duration Development of Oil Jetty to Handle Liquid Cargo and Ship Bunkering Terminal at Old Kandla on BOT Basis under PPP Mode of the Concession and shares or offers to share the results of the same with the Concessionaire, then the Concessionaire shall reimburse the Concessioneing Authority for any expenses made and payments undertaken for the same. The Concessionaire shall reimburse such expenditure within 15 days of the receipt of demand note from Concessioneing Authority, failing which payment shall entail payment of interest @ SBI PLR plus 2% (two percent) till receipt of payment.

### **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 of the Gross Revenue for every 6 (six) monthly period ending 30<sup>th</sup> September and 31<sup>st</sup> 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 Concessioneing Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the “**Additional Auditor**”) to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioneing Authority and report to the Concessioneing Authority such information as may be desired by the Concessioneing Authority for any period and the Gross Revenue (“**Special Audit**”).

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Royalty on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @ SBI PLR plus 2% (two percent) on the difference between the Royalty paid by the Concessionaire based on the Gross Revenue reported by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the Royalties as above. Further the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than [5]% (five percent), the Concessioneing Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

## **9.5 Escrow Account**

The Concessionaire shall maintain an escrow account with a bank

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

(a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority :

- (i) for all taxes due and payable by the Concessionaire;
- (ii) towards payment of License Fee;
- (iii) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
- (iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
- (v) towards its debt service obligations under the Financing Documents;
- (vi) towards payment of Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
- (vii) towards any reserve requirements in accordance with the Financing Documents;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of



Termination Notice and/or suspension of the Concessionaire in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Concessioneing Authority and the Lenders.

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

- (i) towards taxes and statutory dues payable by the Concessionaire;
- (ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (iii) all amounts due to the 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 Lenders and the Concessioneing Authority.

## **ARTICLE 10**

### **ASSETS: OWNERSHIP AND PERMITTED CHARGE**

#### **10.1 Ownership of Assets**

##### **(a) Land and Water Area**

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

##### **(b) Assets created or provided by the Concessionaire**

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

#### **10.2 Permitted Charge on Assets**

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

before Financial Close and shall not continue for a period exceeding the Concession Period.

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

Provided further, in the event of termination of this Agreement, the said charge shall stand extinguished upon payment of compensation by the Concessioneing Authority to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

It is made here utmost clear that the Concessionaire would not have any right on approach from Jetty head to Navigational Channel just because the same is to be dredged by the Concessionaire. Capital and maintenance dredging in approach from Jetty head to Navigational Channel is an Obligation of the Concessionaire. The Concessionaire shall be given access to it just for performing its Obligation. The Concessionaire shall also not restrict or levy any charge for using this approach to Concessioneing Authority or any other person duly authorised by it.

## 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:

Name of Member	Percentage of Equity in Concessionaire
M/s IMC Limited	100%

#### 11.2 Shareholding

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

- (a) The Applicant/ legally and beneficially hold not less than 51% (fifty one percent) of its paid up equity capital until 3 (three) years after Date of Commercial Operations and not less than 26% (twenty six percent) of its paid up equity capital during the balance Concession Period; and

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

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

### **11.3 Constituent Documents**

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

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 Concessioneing 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 Concessioneing 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 Concessioning 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 Concessioning Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

**(ii) Insurance Cover & Insurance Companies**

The Concessionaire shall insure all insurable assets comprised in the Port's Assets

and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice (“**Insurance Cover**”).

**(iii) Evidence of Insurance Cover**

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

**(iv) Application of Insurance Proceeds**

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

**(v) Validity of the Insurance Cover**

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

**(vi) Waiver of Subrogation**

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

**(d) Indemnification**

The 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 Concessioneing Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioneing Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the 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 Concessioneing Authority.

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

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

**(f) Engagement of Contractors**

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

Provided:

- (i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non performance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;
- (ii) the Concessionaire should have obtained requisite security clearance for the Contractor the Concessionaire intends to engage;
- (iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioneing Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- (iv) any contract that it enters with an Affiliate in respect of the Project

shall be on an arms length basis.

**(g) Condition Survey**

- (i) The Concessionaire agrees that at least 6 (six)<sup>3</sup> Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioneing Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioneing Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- (ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioneing Authority a guarantee issued by a scheduled bank in India for a sum of Rs 11.68 Crores (Rupees Eleven Crores Sixty Eight Lakhs 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 Concessioneing Authority shall accordingly

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<sup>3</sup> This period could vary depending on the Project/Concession so as to ensure adequate time for both the survey and restoration of assets

be entitled to terminate this Agreement in accordance with Article 15.

- (h) The Concessionaire may allow the pipeline connectivity from the point within its Licensed Premises to other liquid storage facilities for the movement of liquid cargo handled/to be handled at Project Facilities and Services. However, the same would be subject to compliance of all the Applicable Laws/Permits/Clearances required in accordance with this Agreement and also required by any other Authority than the Concessioneing Authority.

**(i) Security Clearance for Engagement of Foreign Personnel**

The concessionaire shall obtain the clearance for engagement of foreign personnel from Ministry of Home Affairs and this information would be shared with Ministry of Defence, Ministry of External Affairs and Research & Analysis Wing.

- (j) The Concessionaire will obtain prior approval of the security agencies in case there is any engagement of foreign national or foreign equipment at a later stage during the implementation of the project

**12.2 Of the Concessioneing Authority**

**(a) Assistance in obtaining Approvals, Permits and Licenses**

The Concessioneing Authority shall, at the written request of the Concessionaire, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession Period.

**(b) Taxes and Duties**

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

**(c) Competing Facilities**

The Concessioneing Authority shall not operationalise any additional facility

within Port Limits for handling liquid cargo including bunker fuel either on its own or through any other Person until the earlier of (i) 5 (five) years from the Scheduled Project Completion Date; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of Project Capacity for 2 (two) consecutive years ("**Exclusivity Period**"). Provided, this restriction shall not apply to the additional facility envisaged at .

All existing and future projects proposed by the Concessioneing Authority to be implemented through internal resources, public private partnership, joint ventures or as captive facility within port limits i.e. inside Kandla Creek as well as outside Kandla creek viz. at Tuna, Tekra, Khorl, Vadinar, Veera etc.

All the existing and future projects of addition, alteration, modification, modernization & upgradation of berths & its allied facilities to augment the handling capacity of the Concessioneing Authority including mechanization i.e. procurement of new handling equipments, dredging i.e. deepening and/or widening to the present Kandla Creek, berths, navigational channel, etc.

All projects covered in the Concessioneing Authority's Annual Plan, 10th, 11th, 12th Five Year Plan & prospective plan, National Maritime Development Plan (NMDP), Maritime Agenda 2010-2020, business plan including all non-plan schemes.

**(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) Compliance with Laws and Regulations**

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

**(b) Rights to Documents**

**(i) 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.

**(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 Concessioneing Authority of the Lenders' readiness to execute the same.

## **ARTICLE 13**

### **CHANGE IN LAW**

#### **13.1 Change in Law**

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

- (a) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- (b) the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or
- (c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated. Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iii) any rules or regulations stipulated by TAMP or other regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

#### **13.2 The Concessionaire’s Remedy**

- (a) In the event of Change in Law the Concessionaire may propose to the Concessioneing Authority modifications to the relevant terms of this

Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon 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. 16.35 Crores (Rupees Sixteen Crores and Thirty Five lakhs only) may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost upto Rs. 16.35 Crores (Rupees Sixteen Crores and Thirty Five lakhs only) in any accounting year shall be borne by the Concessionaire;
- (c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioneing Authority, of the following:
  - (i) the particulars, nature and the impact of Change in Law on the Project; in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
  - (ii) 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 Concessioneing 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 Concessioneing 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 Concessioneing Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessioneing Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:
- (i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;
  - (ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI PLR + 2% (two percent) on the amount the payment of which is deferred.

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

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs. 16.35 Crores (Rupees Sixteen Crores and Thirty Five lakhs 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 Concessioning Authority, the same shall be finally settled in accordance with the dispute resolution mechanism contained in Article 19 herein.

## **ARTICLE 14**

### **FORCE MAJEURE**

#### **14.1 Force Majeure Event**

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

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

#### **14.2 Non-Political Events**

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

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

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

**14.3 Political Events Any of the following events shall constitute Political Event:**

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

**14.4 Other Events**

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry wide or State wide strikes or industrial action;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;

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

#### **14.5 Notice of Force Majeure Event**

- (a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the “**Notice**”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:
  - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party’s ability to perform its obligations or any of them under this Agreement;
  - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
  - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may

reasonably request.

#### **14.6 Period of Force Majeure**

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

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

#### **14.7 Resumption of Performance**

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

#### **14.8 Performance Excused**

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

#### **14.9 Costs, Revised Timetable**

##### **(a) Costs**

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

##### **(b) Extension of time/period**

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by

such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Concession Period by the Concessioneering 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 Concessioneing 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 Concessioneing 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 a more than 90 (ninety) Days during the Construction Phase;
- (iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- (iv) Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- (v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- (vi) intentionally left blank
- (vii) the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. [Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;]

- (viii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- (ix) the Concessionaire passing a resolution for voluntary winding up;
- (x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (xi) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- (xii) levy of an execution or 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/ 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 Concessioneing Authority Event of Default**

- i. the Concessioneing 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 Concessioneing Authority under this Agreement is found to be false or misleading.
- iii. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).
- iv. levy of an execution or restraint on the Port's Assets in any proceedings against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

**15.2 Parties Rights**

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

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard

to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

### **15.3 Consultation Notice**

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

### **15.4 Remedial Process**

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

- (a) the change of management or control/ownership of the Concessionaire;
- (b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :
  - (i) the criteria for selection of the Selectee;
  - (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;
  - (iii) handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;
  - (iv) acceptance by the Selectee of the outstanding obligations of

- the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;
- (v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and
  - (vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

#### **15.5 Obligations during Remedial Period**

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

#### **15.6 Revocation of Consultation Notice**

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

#### **15.7 Termination due to Events of Default**

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

#### **15.8 Concessioning Authority's Rights of Step-in**

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

- (a) re-enter upon and take possession and control of Project

Site/Project Facilities and Services forthwith;

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

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

## **ARTICLE 16**

### **TERMINATION OF THE CONCESSION/AGREEMENT**

#### **16.1 Termination Procedure**

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

#### **16.2 Obligations during Termination Period**

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

#### **16.3 Requisition**

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the 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 Lenders' certificate;
- (b) data or records test certificates, survey reports, inspection reports, records of maintenance, statutory certificates issued for operation and establishment of project facilities and services and regarding the operation and maintenance of the Project Facilities and Services;
  - (c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and
  - (d) any other information or records cargo traffic, daily output of berths 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 therefore 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;
- (b) the Concessioneing Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessioneing 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 Concessioneing 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 Assets/Project Facilities & Services by the Concessionaire to the Concessioneing Authority shall be free from any such obligation.

## **ARTICLE 17 COMPENSATION**

### **17.1 Compensation**

#### **(a) Termination due to Force Majeure Event**

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

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

#### **(b) Termination due to Concessionaire Event of Default**

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

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

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

#### **(c) Termination due to Concessioneing Authority Event of Default**

If the termination is due to a Concessioneing Authority Event of Default, the compensation payable by the Concessioneing Authority shall be equal to the



aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

#### **17.2 No Compensation on Expiry of Concession Period**

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the 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 Lenders**

The Concessionaire hereby irrevocably authorises the Concessions Authority to pay to the 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 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 Lenders as the case may be shall be entitled to remove at its/

their cost all such moveables which are not taken over by the Concessioneing Authority and to deal with the same in accordance with their respective rights under law.

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

#### **17.5 Delayed Payment of Compensation**

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

#### **17.6 Delayed Transfer of Assets**

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

In case the transfer of assets by the Concessionaire to the Concessioneing Authority

is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning 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 Lenders, or deposit the same in the Escrow Account or on the written instructions of the Lenders to any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the 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 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 Concessioning Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessioning Authority in respect of Concessioning 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 Concessioning Authority under this Agreement.

## **ARTICLE 19**

### **DISPUTE RESOLUTION**

#### **19.1 Amicable Settlement**

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

#### **19.2 Assistance of Expert**

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

#### **19.3 Arbitration**

##### **(a) Arbitrators**

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

two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.

**(b) Place of Arbitration**

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

**(c) English Language**

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

**(d) Procedure**

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

**(e) Enforcement of Award**

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

**(f) Fees and Expenses**

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



**(g) Performance during Arbitration**

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

**ARTICLE 20**  
**REPRESENTATIONS AND WARRANTIES**

**20.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Concessioneing Authority that:

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

- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (j) all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the 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 3.88 m 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 Concessioning 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 Concessioneing Authority:  
CHAIRMAN  
KANDLA PORT TRUST  
P.O.Box 50, Administrative Office, Gandhidham,  
Kutch - 370201. Fax No:02836) – 235782  
Email: chairman@kandlaport.com

The Concessionaire:  
The MANAGING DIRECTOR  
Kandla Oil Terminal Limited  
Neeladri"  
III Floor, 9, Cenotaph Road  
Alwarpet, Chennai 600018,

Fax No. +91-44-45902200  
Email: marketing@imc.net.in

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:

Common Seal of the Concessioneering Authority is affixed pursuant to its resolution No.51 dated 26/06/2013 of the Board in the presence of Mr. R. Murugadoss, Chief Engineer who has signed this Agreement in token thereof.

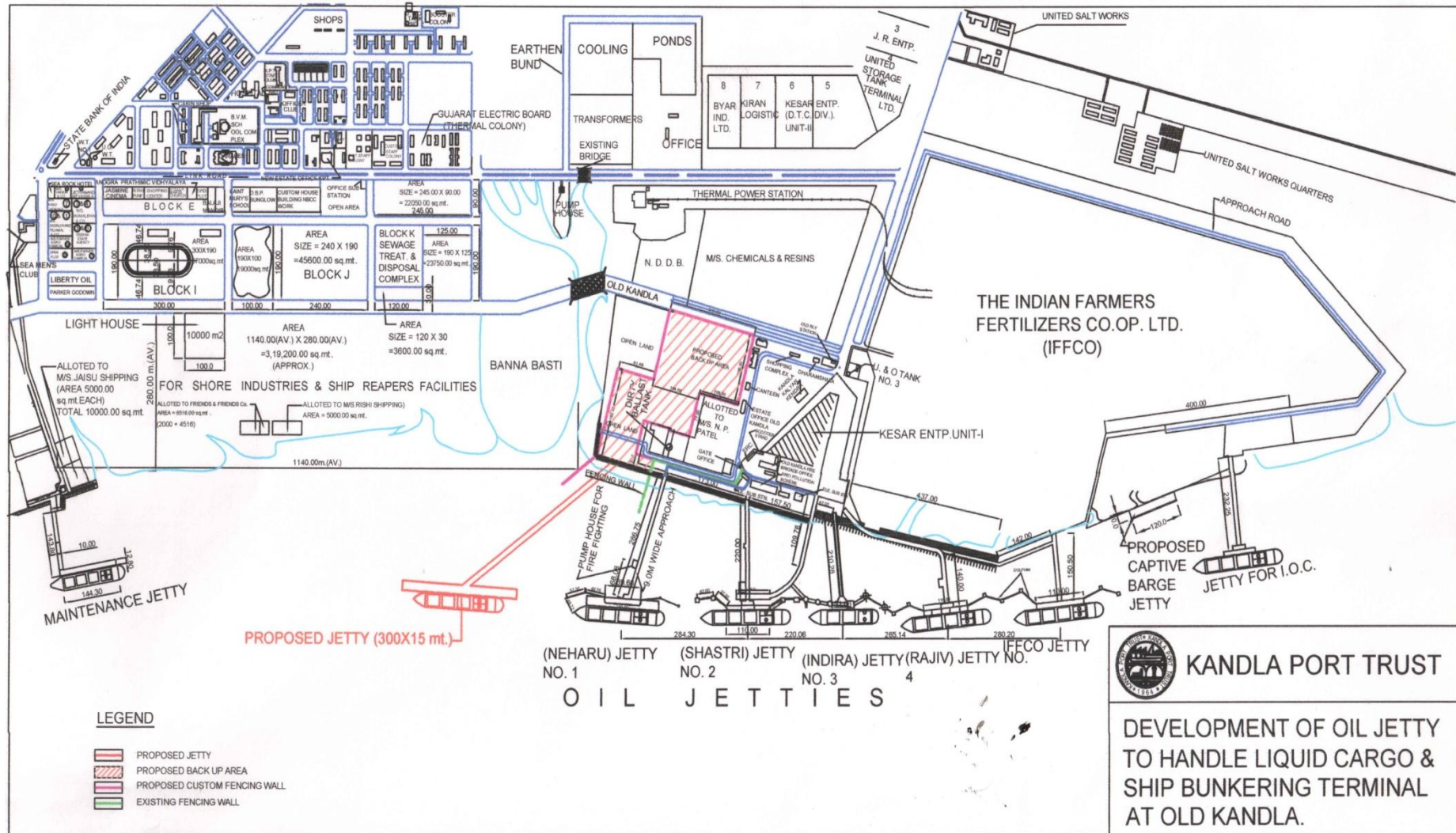
Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. Hemantkumar Ishverlal Desai and Mr. K. Kannan pursuant to Resolution dated 19/08/2013 of its Board of Directors.



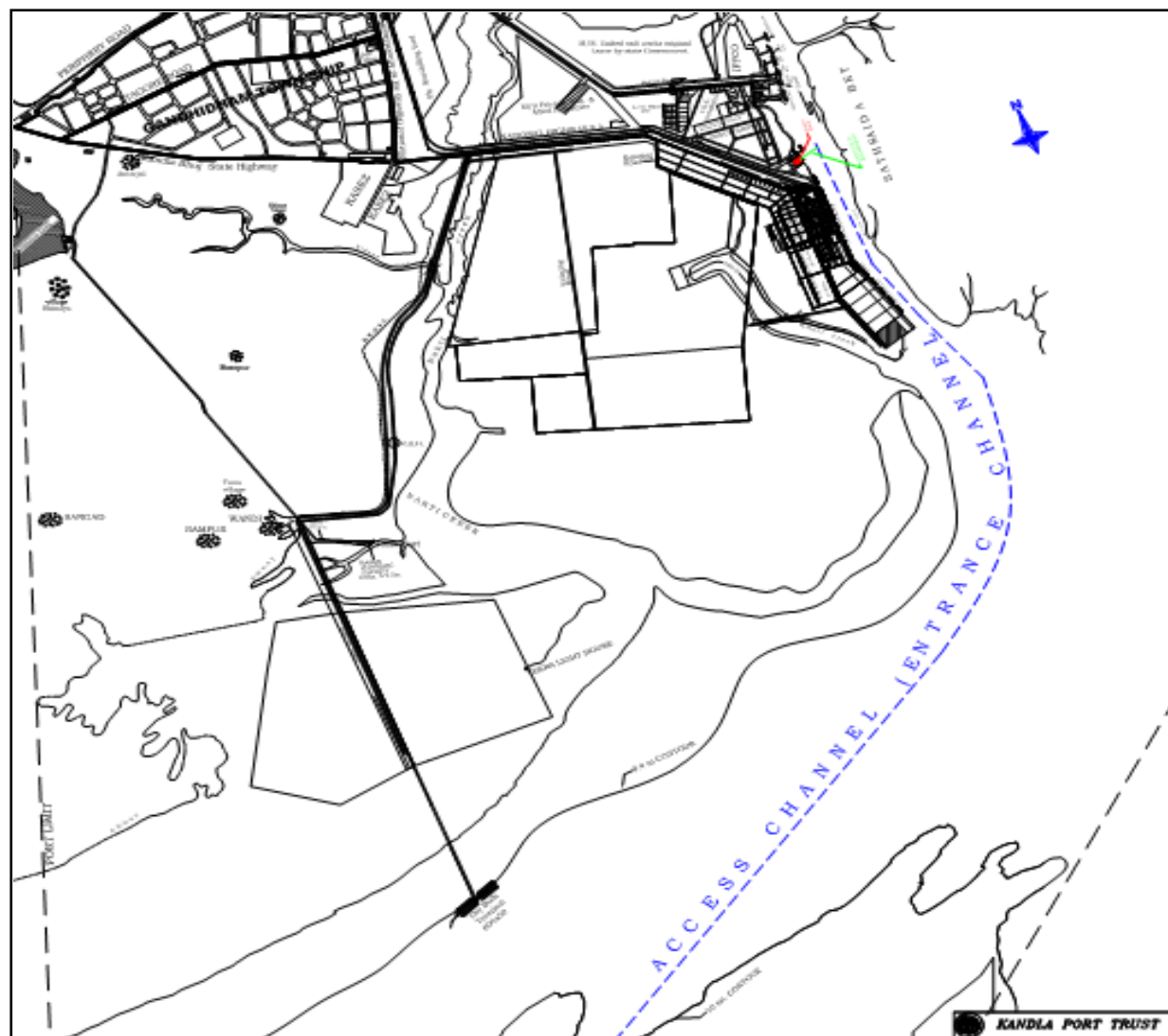
## **APPENDIX 1**

### **PROJECT SITE**

Kandla Port, located on West Coast of India at latitude 23° 01' N and longitude 70° 13' E, is the only Major Port in Gujarat State. It is proposed to construct, operate and maintain Liquid Cargo Jetty cum Ship Bunkering Terminal with a wharf of length 300 m X 15 m on PPP basis. The jetty shall be connected through approach trestle to liquid and bunker storage tank farms and would be used for unloading/loading of all kinds of liquid cargo i.e. POL, vegetable oils, ammonia, phosphoric acid, others etc. from Tankers. The project site is situated near Oil Jetty no. 1 as per the drawing enclosed. Liquid Cargo and Bunker fuel Tank Farms would be developed for storage of various liquids and fuels permissible for the storage as per the CRZ Guidelines, 2011 notified by Ministry of Environment and Forest and the amendments thereof from time to time.



**Annex to Appendix 1 – Drawing showing Project Facility at Kandla (Oil Jetty) from OTB**



## **APPENDIX 2**

### **PORT'S ASSETS**

#### **Details of Licensed Premises (on "as is where is basis")**

The following Port Assets will be handed over to the Concessionaire during the Concession Period.

- Land area is 6.55 Ha (including 1 ha for bunker tank farm).  
Already carried out reclamation/material filling in the above Land Area.

Notes:

The area proposed to be handed over to the Concessionaire is only indicative. However, marginal adjustments in the area will be made depending on the actual site conditions

The area to be handed over to the Concessionaire will be jointly surveyed by the representatives of the Concessioneing Authority and Concessionaire. The License fee as per Article 9 of Concession Agreement will be based on actual measured area.

### APPENDIX 3

#### SUBSTITUTION AGREEMENT

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

AMONGST,

THE \_\_\_\_\_ TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at

-----;

\_\_\_\_\_ (hereinafter referred to as **“the**

#### **Concessioning**

**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 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 Lender”**.

OR

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

WHEREAS,

- a) The Concessioning Authority for implementing a Project envisaging \_\_\_\_\_ by private sector participation (hereinafter referred to as **“the Project”**), has by the Concession Agreement dated -- entered into between the Concessioning Authority and the Concessionaire (hereinafter referred to as **“the Concession Agreement”**) 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 Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders’ Representative.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:**

## **ARTICLE 1**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

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

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

**“Financial Assistance”** means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project. **“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt thereunder by the Concessionaire for a minimum period of 3 (three) months.

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

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

**“Selectee”** means a Person proposed by the Lender/Lender’s Representative pursuant to this Agreement and approved by the Concessioning 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.

## **ARTICLE 2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

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

## **ARTICLE 3 SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1 Rights of substitution**

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

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

### **3.2 Substitution upon occurrence of Financial Default**

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

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

accordance with the provisions of this Agreement.

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

### **3.3 Substitution upon occurrence of Concessionaire Default**

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

3.3.2 In the event that the Lenders/Lenders' Representative makes a representation to the Concessioneing Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Lenders/Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessioneing Authority shall either withhold termination



and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessioneing Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

### **3.4 Procedure for substitution**

3.4.1 The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement. 3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessioneing Authority for prequalifying the bidders for award of the Concession; provided that the Lenders/Lenders' Representative may represent to the Concessioneing Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioneing Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Selectee, the Lenders/Lenders' Representative shall request the Concessioneing Authority to:

- (a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and
- (b) novate the Concession Agreement to the Selectee such that the Selectee replaces the Concessionaire and becomes entitled/obligated to all the rights and obligations of the Concessionaire, for the residual Concession Period.

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this

Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Selectee shall be deemed to have been accepted. The Concessioneing 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 Concessioneing Authority, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

### **3.5 Selection to be binding**

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

**ARTICLE 4  
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  
TERMINATION OF CONCESSION AGREEMENT**

**5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders/Lenders' Representative may by a notice in writing require the 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 Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the 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 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  
DURATION OF THE AGREEMENT**

**6.1 Duration of the Agreement**

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

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the

Lenders, under the Financing Documents.

**ARTICLE 7  
INDEMNITY**

**7.1 General indemnity**

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

7.1.2 The Concessioning 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 Concessioning 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 Concessioning Authority.

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

**7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified**

**Party”)**, it shall notify the other Party responsible for indemnifying such claim hereunder (the **“Indemnifying Party”**) within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **ARTICLE 8**

### **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 “Concessioning Authority”, the “Concessionaire”, the “Lender” and the “Lenders’ Representative”, “Selectee” herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- (iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessioning Authority, “Selectee” and the successor in interest of the Lender or Concessioning Authority shall have the benefit of this Agreement.
- (vi) 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 Concessioning Authority and the Lenders/Lender’s

Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator. This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.

- (vii) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (ix) The Concessionaire agrees and acknowledges that it shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (x) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- (xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.

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.**

<b>Name and Address of the Lender</b>	<b>Nature and Amount of Financing Assistance</b>
---	--

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

BY :

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF GOVERNMENT OF INDIA

BY : \_

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

----- ON BEHALF OF THE

LENDERS SET FORTH IN SCHEDULE I

----- BY : \_\_\_\_\_

Name :

## APPENDIX 4

### PROJECT REQUIREMENTS

#### Project Facilities and Services:

A brief description of Project Facilities and Services shall be provided. Also certain key project facilities shall be set out, for example:

(i) Berth length

On the Date of Commercial Operations berth length not less than 300 meters x 15 meters shall be provided. In addition to this, an approach trestle of approximately 450 m length and approximately 10 m width shall be provided for connecting the berth and the liquid and bunker storage tank farm.

(ii) Equipment

(iii) On the Date of Commercial Operations, the berth shall be equipped with equipment with capacity to handle 3.39 MMTPA of liquid cargo.

#### Others

The personnel and other related facilities should be capable of handling 3.39 MMTPA of liquid cargo in accordance with the Performance Standards set out in Appendix 15.

The project facilities and services broadly include but not limited to Off Shore Reinforced Cement Concrete (RCC) Berthing structure of 300 m x 15 m with suitable berthing aids,

- RCC approach bridge with connecting platform between jetty and approach bridge, crew office, high mast lighting tower, fire house, Providing Temporary Custom fencing wall, Providing Fire fighting line, Asphalt paving behind approach till liquid storage tank farm, Electrification works, Gate office and security check, back up area of 5.5 ha (including 1 ha of Bunker Farm) along with development of Tanks for storage of Liquid cargo, Construction of permanent boundary wall, supplying pipelines from the Oil Jetty to the tank farm, Piping network within the tank farm, Tank trucks loading racks and pumping, Product laboratory, Providing fire fighting system, Electrification works, High capacity new weigh bridges, Providing drainage facilities, separate building for housing the equipment for controlling the fire-fighting system, O&M personnel, CISF and Customs Staff and Capital dredging and Maintenance dredging alongside the jetty and jetty head to Navigational Channel.

All the soil and other dredged material excavated during the capital and maintenance dredging shall be the property of the Concessioneering Authority and the same shall be disposed off and deposited in the area approved by the Concessioneering Authority from time to time to the Concessionaire



The Major components of the project facility are indicated below:

**(A) CIVIL & STRUCTURAL WORKS:**

(1) Reinforced Cement Concrete (RCC) wharf structure (Jetty Head)

The RCC wharf Structure shall be 300 m long and 15 m wide. The wharf structure shall be supported on RCC piles. The wharf structure shall be provided with suitable berthing aids like Bollards, fenders etc.

**Salient Features:**

- i. Length of wharf structure - 300 m
- ii. Width of wharf structure - 15 m
- iii. Length of Approach Trestle – 450 m
- iv. Width of Approach Trestle – 10 m
- v. Length of Connecting Platform between Wharf Structure and Approach Trestle – 114 m
- vi. Width of Connecting Platform between Wharf Structure and Approach Trestle – 10 m
- vii. Finished top level - (+) 9.14
- viii. Foundation - RCC piled foundation
- ix. Berthing Aids like but not limited to - Bollards, ladders & fenders
- x. Designed Dredged Depth – 14.1 meter

**□ Design Parameters of wharf structure:**

- i. Capacity to carry super imposed load - 5 MT / m<sup>2</sup>
- ii. Bollard Pull – 100 T; Fenders for 200 T Berthing Energy
- iii. Capable to withstand the load of the mechanization/handling equipments.
- iv. The wharf structure should be designed to Handle One large size vessel or two small size vessels at a time.

**□ Particulars of the Design vessel at Dead Weight Tonnage :**

- (a) Maximum size of vessel which can be accommodated – upto 80000 DWT  
(b) Fully laden draught: 13 meters

In addition to above, weight of marine loading and unloading arms and all other allied electrical and mechanical systems like pipelines, hoses, etc. required along with that has to be considered in the design. As Kandla is in Seismic zone V, detailed seismic analysis for the berth and approach structure has to be carried out.

**(2) DEVELOPMENT OF BACK UP AREA**

An area admeasuring to 5.5 hectares (including 1 ha for Bunker tank farm) shall be developed by reclamation/ filling the area with suitable sundries material. The filled material shall be consolidated and stabilized by suitable

and required manner to increase its bearing capacity (load carrying capacity) to withstand a superimposed load of required force (i.e. 5 MT/m<sup>2</sup>) without substantial ground settlement. In case if required, the concessionaire may undertake the suitable ground treatment for consolidation of the existing soil to avoid the substantial settlement of existing soil during storage of cargo.

Note: The superimposed load of 5 T/m<sup>2</sup> on wharf is the minimum load. However the wharf structure shall be able to withstand the load of the cargo and the installed equipments at the jetty.

Development of Back up Area would also comprise of the development of steel tanks for liquid cargo storage and bunker fuels. Liquid storage tank farm would be constructed with minimum standard capacity of 132000 KL while bunker fuel storage tank farm would be constructed with standard capacity of 32500 KL.

### **(3) ROAD NETWORK**

The Kandla Port will provide the common road facility outside the licensed premises. The Concessionaire shall construct the appropriate road network, within licensed premises and its connectivity to the aforesaid common road facility.

#### **Allied facilities:-**

The Concessionaire shall construct the following allied facilities with the licensed premises:

- Reinforced cement concrete custom fencing wall: The height & pattern of fencing wall shall meet with the norms of security & custom besides its structural stability.
- Water supply, fire fighting lines, drainage lines, storm water drains.
- Development utilities and services such as communication, office accommodation etc required for operation of the berth.
- Road network within back up area.
- Work related to the pollution control & conservation of environment
- Other miscellaneous item and related facilities capable of handling cargo in accordance with the performance standard setout in Appendix 15.

Note:

i. The Kandla Port is located in the Zone V as per IS 1893 (Indian Standard showing criteria for earthquake resistant design structure.) Accordingly, all the structures shall be designed and constructed as per the various provisions laid down in the Indian Standard Codes for earthquake resistance design.

ii. Planning, design, engineering, installation, operation & maintenance of all developmental works shall be comply to the relevant Indian Standards and in the absence of Indian Standards relevant International Standards shall be complied with. List of construction, operation, maintenance are annexed to this article. In the absence of both, Concessionaire should follow good industry practice, safety precaution, as per statutory requirements. The Concessionaire shall ensure compliance of quality, environment, occupational, health & safety and ISPS code.

### **(B) HANDLING EQUIPMENTS (Mechanization)**

The system for handling the liquid cargo which may include but not limited to loading-unloading arms for liquid cargo handling and any of the other suitable technologies which shall be latest state-of-arts having handling rates to commensurate to achieve the Optimal Capacity of the Project, i.e. 3.39 MMTPA. Aforesaid systems would include but not limited to the suitable pipelines to/from Jetty from/to liquid and bunker fuel storage tank farm and also the pipelines network within the tank farms, i.e. for liquid cargo and bunker fuel.

### **(C) ELECTRIFICATION**

The concessionaire has to take the Electrical connection from the nearest available source i.e. Kandla Special Economic Zone. The transmission line and appropriate type & size of substation may be provided for the project facility by its own cost. The design and drawings for the same may be submitted by concessionaire to the Concessioneing Authority and Independent Engineer for its review.

## **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 Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

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

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

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) 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

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

BS 6349: British Standard Code of Practice for Maritime Structure 1991, Part 5: Code of Practice for Dredging and Land Reclamation

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

IS 2974: Part 5: 1987	type machines of low frequency. Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drop crusher and jolter)
IS 1080: 1985	Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).
IS 13094: 1992	Guidelines for Selection of ground improvement techniques for foundation in weak soils.

### ***Indian Standards for Structural Design***

IS 875(Part I to V): 1987	Code of Practice for design loads (other than earthquake) 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 earthquake 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.

### **B-2 Bulk Liquid Terminals and Tank Farms**

In addition to complying to the requirement of relevant specifications mentioned above, in respect of port terminals meant for handling bulk liquids such as crude, POL, hazardous chemicals, LPG, LNG, etc., the concessionaire shall also comply with the requirements of IMO Standards, MSIHC Rules 1989, IMDG Codes, OISD Standards & Guidelines, Petroleum Rules and Act, Explosives Act and statutory

requirements.

## **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

BS 4999 / FEM 3rd edition Booklet 4 - Motors

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/ Cranes - Vocabulary Part 2 Mobile cranes ISO 4306-1985

IS 13558: Part 2:1995/ Cranes - Controls - Layout and Characteristics – Part ISO 7752 –2- 1986 Mobile Cranes

IS 13834 : Part 2: 1993/ Cranes - Classification: Part 2 Mobile cranes ISO 4301 – 2 :1985

IS 13870: Part 2: 1993/ Cranes and Lifting Appliances - Selection of Wire ISO 4308 : 1988 Ropes - Part 2: Mobile Cranes -

Coefficient of utilization

IS 14469: 1997/ Mobile Cranes - Determination of Stability ISO 4305 - 1991

IS 14474: Part 1: 1997/ Mobile Cranes - Experimental Determination of Crane ISO 11662-1 :1995 Performance – Part 1 : Tipping Loads and Radii

IS 3173: 1965 Specification for High pressure connections for fuel injection equipment for diesel engines

## **C-4 Conveyors for Bulk Handling**

### **Conveyors**

IS 4776:Part I: 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**

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 IS 14981: 2001	Galvanized Strand for Earthing – Specification Live Working - Earthing or Earthing and Short-Circuiting Equipment Using Lances as a Short-Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 : Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers-Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732	IS 732: 1989 Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1 for working voltages upto and including 1100 V

IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working volages 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 it's 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.

The Concessionaire shall within a period of 45 (Forty five) days from the date of award of concession shall prepare a detailed Operations & Maintenance Plan (O&M Plan) and submit the same for approval to the Concessioning Authority.

Concessioning Authority within 30 days of receipt of O & M Plan shall approve or suggest modifications. Concessionaire within 10 days of receipt of

modifications/suggestions if any, from the Concessioning Authority, shall incorporate the changes and submit the O&M Plan to the Concessioning Authority for final approval. The Concessionaire shall abide by the approved operations and maintenance plan.

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

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

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

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

#### **E.1 Maintenance Standards**

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

## **F. Safety Standards**

BS 7121-5-2006  
(Tower Cranes)

(  
Lorry Loaders)  
Code of Practice for safe use of 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 I : 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

The Concessionaire shall ensure compliance 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

The work of Capital and Maintenance dredging shall be executed as per the relevant provisions of the appropriate Bureau of Indian standards (BIS). Where relevant BIS do not exist the latest version of the relevant British Standards Specification or Standards of the American Society for testing shall be applied. Equivalent standards from other countries may be applicable provided they are demonstrated to be equal to or more onerous than the standards quoted above. The Dredging shall be carried out generally as per BS:6349 British Standard Code of Practice for Marine Structures-Part-5(1991), Code of Practice for Dredging and Land Reclamation and US Army Corps of Engineers(1984) Shore protection Manual. All the soil and other dredged material excavated during the capital and maintenance dredging shall be the property of the Concessioneing Authority and the same shall be disposed off and deposited in the area instructed by the Concessioneing Authority through prior written permission to be taken by the Concessionaire.



## APPENDIX 5

### PROJECT SCHEDULE

#### 1. Civil Works

Milestone date	Activity/level of completion of project
6 months from Date of Award of Concession	15% of Wharf Structure and Approach Trestle 10% of Tank Farms
12 months from Date of Award of Concession	45% of Wharf Structure and Approach Trestle 40% of Tank Farms 30% of All Other Allied Facilities
18 months from Date of Award of Concession	75% of Wharf Structure and Approach Trestle 75% of Tank Farms 75% of All Other Allied Facilities.
22 months from Date of Award of Concession	90% of Wharf Structure 90% of Tank Farms 90% of All other Allied Facilities
24 months from Date of Award of Concession	100% of Wharf Structure and Approach Trestle 100% of Tank Farms 100% All other Allied Facilities

#### 2. Handling Equipment & Electrification

The Concessionaire within a period of 30 (thirty) days from the date of award of concession shall submit detailed schedule of implementation (with milestones) of handling equipment and electrification works to Concession Authority for review. Concessioning Authority within 5 (five) days of receipt of such schedule shall give their comments. The Concessionaire shall incorporate comments of the Concessioning Authority wherever feasible so as to ensure the implementation of the handling equipments and electrification within the suggested timeframe.

Concessionaire shall submit the monthly progress report of the implementation activities.

## **APPENDIX 6**

### **DESIGNS AND DRAWINGS**

Concessionaire shall prepare Designs & Drawings for the following items but not limited to:

- A. Civil and Structural Work:-
  - i. Layout plans of Project Facilities and Services.
  - ii. Detailed structural drawings for all project facilities inter alia for the components of the Project Facilities indicated in Appendix- 4 (Project Requirements) like Civil & Structural Works, Development of Back up area, Road and Railway Network, Allied facilities, etc.
- B. Handling Equipments
- C. Electric Work

The Concessionaire shall also prepare detailed report on analysis and structural design of Project Facilities & Services along with the aforementioned Designs & Drawings.

The Concessionaire shall within a period of 45 (Forty Five) days from date of the award of concession shall prepare aforementioned Designs & Drawings and report on analysis and structural design of Project Facilities and Services. The Concessionaire shall submit the same for review to the Independent Engineer and Concessions Authority.

Independent Engineer after taking into account Concessions Authority's comment shall send its comment to the Concessionaire within 15 (fifteen) days of receipt of Designs and Drawings.

Concessionaire shall incorporate comments of the Independent Engineer wherever feasible to conform to the Construction Standards.

## **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
- (vii)** undertaking all other duties and functions as envisaged under the Agreement.

#### **2. Review of 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 Concessioneing 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 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.
- (xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioneing 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 Concessioneing 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 Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

## **Annexure 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 their Contractor shall 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 Good Industry 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 this 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 Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
  - (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as

- per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery
- (iii) **Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
  - (iv) **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
  - (v) **Safety Review:** Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and 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 by the Concessionaire.
- 8) The Independent Engineer shall obtain a copy of operational and maintenance manuals 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 shall 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) Test shall also satisfy the appropriate Authority and Certification
- (i) Dock safety Directorate
  - (ii) Environmental Authority
  - (iii) Director of Explosives
  - (iv) Fire
  - (v) Ground Water Authority
  - (vi) Customs
- 11) Test of Handling Equipments & Electrification works  
The Concessionaire shall within a period of 45 (Forty Five) days from the date of award of the concession shall submit to Concessioning Authority a report highlighting type of tests that would required to be carried out as



per the type of the equipments for the above mentioned project.

Concessioning Authority within 10 (ten) days of receipt of such document shall give their comments.

The Concessionaire shall incorporate comments of the Concessioning Authority and shall submit the revised document within 10 (ten) days of receipt of comments.

## APPENDIX 8

### PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/ CONCESSIONING AUTHORITY

A. Applicable Permits to be obtained by the Concessionaire before commencement of Construction Works.

The Concessionaire is liable to obtain Applicable Permits as and when required before commencement of the Construction Works and during the Concession Period. The following is list of Applicable Permits, is not exhaustive however, the Concessionaire will have to ascertain independently the Applicable Permits and indicate time frame for obtaining the applicable permits.

Activity
(i) Fire safety clearance
(ii) Clearances required from Petroleum and Explosives Organization of India
(iii) Any other clearance required as per statutory requirement

**B. The following is a list of the permits to be obtained by the Concessioning Authority**

Activity	Authority
Environment Clearance	Ministry of Environment & Forest, GoI.

## APPENDIX 9

### PERFORMANCE GUARANTEE

#### (PROFORMA OF BANK GUARANTEE)<sup>40</sup>

**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 \_\_\_\_\_ TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at \_\_\_\_\_  
\_\_\_\_\_ (hereinafter referred to as **“the Board”** or **“the Concessioneering 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 \_\_\_\_ (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 Applicant”**) and issued the Letter of Intent No \_\_\_\_ dated

<sup>40</sup> To be issued by a Scheduled Bank in India.

\_\_\_\_\_ (“**LOI**”) to the /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/ 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. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

**NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. (“the Concessionaire”) of all its obligations under the Concession Agreement during the Construction Phase.

The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs.[●] (Rupees [●] only) within five (5) calendar Days of receipt of a written demand therefore 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 Concessioneing 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 Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [●] (Rupees [●] 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 Concessioneing 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 Concessioneing Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioneing Authority in this Guarantee;
9. 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. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this

Guarantee or to be released, relieved or discharged from any of its \_\_\_\_\_ obligations, covenants, agreements and duties hereunder for any reason whatsoever.

10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under .
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of \_\_\_\_\_ 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 on build, operate and transfer (BOT) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED

For and on behalf of  
the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation

) (Address)



### PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on build, operate and transfer (BOT) basis through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article [●] 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: (Signature)  (Name and Designation)  (Address)	SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by: (Signature)  (Name and Designation)  (Address)
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## **APPENDIX 11**

### **PERSONNEL AND LABOUR REQUIREMENTS**

NIL

## APPENDIX 12

### TARIFFS

#### **UPFRONT TARIFF SCHEDULE FOR THE OIL JETTY TO HANDLE LIQUID CARGO AND SHIP BUNKERING TERMINAL AT OLD KANDLA**

##### **Definitions**

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

- i. **"Coastal Vessel"** means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority
- ii. **"Foreign Vessel"** means any vessel other than a coastal vessel
- iii. **"Free period"** shall mean the period during which cargo shall be allowed storage free of demurrage charges/ground rent and this period shall exclude Customs notified holidays and Terminal's non-operating days
- iv. **"Port"** shall mean Kandla Port Trust
- v. **"Per day"** means per calendar day unless otherwise stated
- vi. **"TAMP"** shall mean the Tariff Authority for Major Ports constituted under Section 47A of the Major Trusts Act, 1963.
- vii. **"Tonne"** shall mean one metric tonne or 1,000 kilograms or one cubic metre.

##### **1.1. General Terms and Conditions**

- i. Interest on delayed payments / refunds:
  - a) The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
  - b) The rate of penal interest will be 2% above the Prime Lending Rate of the State Bank of India.

- c) The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
  - d) The delay in payments by the users will be counted only 10 days after the date of raising the bills by the Terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- ii. All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- iii. Users will not be required to pay charges for delays beyond reasonable level attributable to the terminal operator.
- iv. In case a Oil Vessel idles due to breakdown or non-availability of the shore based facilities of Oil Terminal or any other reasons attributable to Terminal, rebate equivalent to berth hire charges payable to the concessionaire accrued during the period of idling of vessels shall be allowed by Concessionaire.
- v. The status of the Vessel as borne out by its certification by the Customs or Director General of Shipping is the relevant factor to decide whether vessel is "Coastal" or foreign-going" for the purpose of levy of Berth hire, and the nature of cargo or its origin will not be of any relevance for this propose.
- vi.
  - (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.
  - (b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
  - (c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
  - (d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations, immediately thereafter foreign going rates shall be chargeable by the discharge ports.
  - (e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.
- vii.
  - (a). The berth hire for all coastal vessel should not exceed 60% of the corresponding charges for other vessels.
  - (b). The cargo related charges for all coastal cargo other than crude including POL, Iron ore and Iron pellets and thermal coal should not exceed 60% of the normal cargo related charges.

- (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer and transfer from/to quay to/from storage yard including wharfage.
  - (d). Cargo from a foreign port which reaches an Indian Port "A" for subsequent transshipment to Indian Port "B" will be levied the concession charges relevant for its coastal voyage. In other words, cargo from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.
  - (e). The charges for coastal cargo / vessels shall be denominated and collected in Indian rupee.
- viii. The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if it so desires, charge lower rates and / or allow higher rebates and discounts.

The terminal operator may also, if it so desires rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.

The terminal operator should, however, notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and / or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP

## 2. Berth Hire Charges:

The berth hire charge payable by masters / owners / agents of the barge and other floating craft approaching or lying alongside the berth shall be as per the rates given below:

<b>Foreign going Vessels</b>	Rs.0.57 per GRT per hour
<b>Coastal Vessels</b>	Rs.0.34 per GRT per hour

### Notes:

- i. The period of berth hire shall be calculated from the time vessel occupies the berth.
- ii. Berth hire includes charges for services rendered at the berth, such as occupation of berth, rubbish removal, cleaning of berths, fire watch, etc,
- iii. No berth hire shall be levied for the period when the barge idles at its berth for continuous one hour or more due to breakdown of terminal operator's equipment or power or for any other reasons attributable to the terminal operator.

### 3. Cargo Handling Charges:

#### 3.1 Calculation of Tariff for the handling of Liquid cargo at Oil Jetty at Old Kandla Port

The liquid cargo handling charges at Oil Jetty shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Description / Cargo	Tariff in Rs. per MT
Bunker Fuel and POL (Both foreign and coastal)	31.29
Other Liquid (Foreign traffic)	108.64
Other Liquid (Coastal traffic)	65.18

**Note:**

The cargo handling charges shall include the cargo loading or unloading charges (as the case may be), transportation through pipelines, wharfage, etc.

- i. unloading of the cargo from vessels and transfer of the same up to the point of storage and loading on to trucks/tankers in respect of import cargo and
- ii. unloading of the cargo from the trucks/tankers at the storage tank farm in respect of export cargo, transfer of the cargo to the loading point, loading onto the vessels and barges.
- iii. Tariff for Bunker Fuels to be handled at back side of the Jetty through barges would be charged at 50% of the above rate applicable for "Bunkering Fuel and POL" category.

### 4. Storage Charges:

The storage charges for the cargo stored in the tank farm shall be as below:

(A) For Import & Export

	(Rate in Rs.per MT per day)
Liquid Tank Farm	6.21
Bunker Fuel Tank Farm	7.21

(B) For Import & Export

Description / Cargo	(Rate in Rs.per MT per Month)Tariff
Liquid Tank Farm	186.31
Bunker Fuel Tank Farm	216.33

**Note:**

- i. No free days shall be allowed for any type of cargo.

- ii. The demurrage charges on hazardous liquids shall be levied at 1.25 times the normal rates specified in above schedule.
- iii. Storage charges shall be payable for all days including Terminal's nonworking days and Customs notified holidays for stay of cargo.
- iv. Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver/ship the cargo when requested by the user due to reasons attributable to the terminal operator.

**5. Miscellaneous Charges**

A rate of Rs.4.11 per MT is to be levied towards Cleaning of the area in the event of spillage, leakage.

**6. General Note to Section 2 to 5 Above**

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 2012 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.

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**APPENDIX 13**  
**RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES**  
(Scale of Rates)

Kandla Port Trust

Scale of Rates

**CHAPTER - I**

**1.1. Definitions - General**

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

- (i). "Coastal vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority.
- (ii). "Demurrage" shall mean charges payable for storage of cargo within port premises beyond free period, as specified in the Scale of Rates.
- (iii). "Foreign-going vessel" shall mean any vessel other than Coastal vessel.
- (iv). "Full Container Load" "(FCL)" shall mean a container having cargo of one Importer/Exporter
- (v). "Hazardous Chemicals" mean and include the chemicals referred under Schedule I, Schedule II and Schedule III of Manufacture, Storage and import of Hazardous Chemicals Rules, 1989 framed under Environment (Protection) Act, 1986 and Rules, as applicable from time to time.
- (vi). "Less than a Container Load" "(LCL)" shall mean a container having cargo of more than one Importer/Exporter.
- (vii). "Port area" means the custom bonded area of the Port.

**1.2. General Terms & Conditions**

- (i). (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.
- (b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
- (c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
- (d). In cases of such conversion coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations;



immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.

- (e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.
- (ii). 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 classifying into 'coastal' or 'foreign-going' category 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.
- (iii). (a). All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees at the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector banks as may be specified from time to time.  
  
(b). The day of entry of the vessel into port limits shall be reckoned as the day for such conversion. In respect of charges on containers, the day of entry of the vessel in the case of import containers and the day of arrival of containers into the port in the case of export containers shall be reckoned as the day for such conversion.
- (iv). A regular review of exchange rate shall be made once in 30 days from date of arrival in the cases of vessels staying in the Port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.
- (v). For the purpose of calculating the dues the unit by weight shall be 1 tonne or 1,000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1,000 litres.
- (vi). Interest on delayed payments / refunds:
  - (a). The user shall pay penal interest on delayed payments and the Port shall pay penal interest on delayed refunds at the rates of 14.75%
  - (b). The rate of interest will be 2% above the Prime Lending Rate of the State Bank of India. The penal interest will apply to both the KPT and the port users equally.
  - (c). The delay in refunds by the port will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the user, 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 KPT. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of Port Trust's properties as stipulated in the Major Port

- Trust Act, 1963 and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (vii). User will not be required to pay charges for delays beyond a reasonable level attributable to the Port.
  - (viii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
  - (ix). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.
  - (x). An LCL container coming in and going out of the KPT as a unit load will be regarded as an FCL for the purpose of levying charges.
  - (xi) (a). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebate and discounts are floor levels. The Port Trust may, if so desires, charge lower rates and or allow higher rebates and discounts.
  - (b). The Port Trust 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 user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.
  - (c). The Port Trust should notify the public such lower rates and/or rationalization of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by this Authority.
  - ( xii) (a). The vessel related charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
  - (b). The cargo/container related charges for all coastal cargo/containers, other than thermal coal and POL including crude oil, iron ore and iron ore pellets should not exceed 60% of the normal cargo/container related charges.
  - (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from/to quay to/from storage yard including wharfage.
  - (d). In case of container related charges, the concession is applicable on composite box rate. Where itemized charges are levied, the concession will be on all the relevant charges for ship-shore transfer, and transfer from/to quay to/from storage yard as well as wharfage on cargo and containers.

- (e). Cargo/container from a foreign port which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be levied the concession charges relevant for its coastal voyage. In other words, cargo/containers from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.
- (f). The charges for coastal cargo/containers/vessels shall be denominated and collected in Indian Rupees.

## CHAPTER - II

### VESSEL RELATED CHARGES

#### 1. SCHEDULE OF PORT DUES

Sr. No.	Rate per GRT					Frequency of payment in respect of the same vessel
	Kandla			Vadinar		
		Coastal vessel  (in Rs.)	Foreign- going vessel (in US \$)		Coastal vessel  ( in Rs.)  Foreign- going vessel (in US \$)	
		8.414	0.3404		1.730 0.07	The due is payable on each entry into the port

#### Notes:

- (1). Port Dues of a vessel will be assessed on her total GRT at the rate shown against the relevant vessel group according to GRT of that vessel.
- (2). For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the "Remarks" column of the International Tonnage Certificate will be taken to be its gross tonnage for the purpose of levying Port Dues.
- (3). A vessel entering the port in ballast and not carrying passengers shall be charged with only 75% of the Port Dues with which she would otherwise be chargeable.
- (4). A vessel entering the port but not discharging or taking in any cargo or passenger therein (with the exception of such unshipment and reshipment as may be necessary for the purposes of repairs) shall be charged with only 50% of the Port Dues with which she would otherwise be chargeable.

- (5). A LASH vessel making a 'second call' to pick up empty and / or laden fleeting LASH barges shall be treated as vessel entering a Port, but not discharging or taking any cargo or passenger therein, and shall not be charged any Port Dues.
- (6). Port dues shall be levied at 50% of the above rates in the following cases:
- Vessel entering the port for taking any provisions, water bunker, etc. for her own consumption.
  - Telegraph vessel.
- (7). No Port dues shall be chargeable in respect of:
- any pleasure-yacht; or,
  - any vessel which having left any port is compelled to re-enter it by stress of weather or in consequence of having sustained any damage.
- (8). Dedicated daughter vessels employed due to draft restriction at the Kandla port for the purpose of shuttling down between the Vadinar lighterage point and the Kandla port shall be treated as 'coastal vessel' if they possess valid Coastal Licence. Further, no Port Dues shall be levied on them at Kandla if Port Dues are levied at Vadinar.

#### 2.1. SCHEDULE OF PILOTAGE FEES

Sr. No.	Slabs of GRT	Rater per GRT			
		Kandla		Vadinar	
		Foreign (in US \$)	Coastal (in ₹)	Foreign (in US \$)	Coastal (in ₹)
1.	Upto 30,000 GRT	0.6920	17.1075	0.4125	10.1979
2.	30,001-60,000 GRT	U.S.\$ 20760 + U.S.\$ 0.5529 per GRT over 30000 GRT	₹513225 + ₹13.668 per GRT over 30000 GRT	U.S.\$ 12375 + U.S.\$ 0.329 per GRT over 30000 GRT	₹305937 + ₹8.1366 per GRT over 30000 GRT
3.	Above 60,000 GRT	U.S.\$ 37347 + U.S.\$ 0.4833 per GRT over 60000 GRT	₹923265 + ₹10.1643 per GRT over 60000 GRT	U.S.\$ 22245 + U.S.\$ 0.2896 per GRT over 60000 GRT	₹550035 + ₹7.159 per GRT over 60000 GRT

#### 2.2. MISCELLANEOUS PILOTAGE FEES

Sr.No.	Items	Rate at Kandla Division		Rate at Vadinar Division	
		Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
1	Inward or Outward pilotage cancellation fees (with notice of less than 3 hours).	10013.47	405.076	6765.86	273.70
2	Pilot going to Pilot Station to pilot incoming vessel and	16522.41	688.3828	11,163.79	451.61

	returns back due to non-arrival of vessel				
3	Pilot boarding an outgoing vessel or leaving in the craft for the vessel in mooring or stream for pilotage and has to return back due to non-readiness of vessel.	16522.41	688.3828	11,163.79	451.61
4	Cancellation of shifting of vessels (with notice of less than 3 hours)	22827.21	936.7512	15,423.79	632.94
5	Services rendered by Pilot to a vessel at OTB / Pilot Station for double banking, etc.	25% of Pilotage fees		25% of Pilotage fees	
6	Attendance fees if Pilot is required to attend a ship at the request of the master or the agent or by the KPT's authorized official for work other than piloting the ship in or out of the harbor or other than berthing or unberthing or shifting of the vessel.	1652.57 per hour or part thereof	66.8516 per hour or part thereof	1,116.60 per hour or part thereof	45.17 per hour or part thereof
7	Pilot detained in the Port Launch for more than half an hour before boarding the vessel.	2653.91 per hour or part thereof	107.3592 per hour or part thereof	1,793.18 per hour or part thereof	72.54 per hour or part thereof
8	Pilot detained on board the vessel to be piloted in or out or shifted for more than 15 minutes.	8286.27 per hour or part thereof	335.2052 per hour or part thereof	5,598.83 per hour or part thereof	226.49 per hour or part thereof

Notes:

- (1). Pilotage fees of a vessel shall be assessed on her total GRT (Gross Registered Tonnage) at the rate shown against the relevant vessel groups according to GRT of that vessel.

- (2). Pilotage-cum-towage fees shall include one inward and one outward movement with required number of tugs/launches of adequate capacity and shifting of vessels for 'Port convenience'.
- (3). Shifting within the harbour at the request of the vessel shall be charged at 25% of the Pilotage-cum-towage fees.
- (4). No charges shall be levied for shifting of a vessel for port convenience.
  - (i). "Port convenience" is defined to mean the following:
    - (a). If a working cargo vessel at berth or /mooring is shifted / inberthed for undertaking hydrographic survey work or for allotting a berth for the dredger or for attending to repairs to berths, maintenance and such other similar works whereby shifting is necessitated, such shifting shall be considered as "SHIFTING FOR PORT CONVENIENCE". The shifting made to reposition such shifted vessel is also considered as "SHIFTING FOR PORT CONVENIENCE".
    - (b). If a working cargo vessel is shifted from berth to accommodate on ousting priority, vessels which are exempted from bearing shifting charges, such shifting shall treated PORT CONVENIENCE".
    - (c). Whenever a vessel is shifted to accommodate another vessel which can not be berthed at other berths due to draft and LOA restrictions vessel is considered as "SHIFTING FOR PORT CONVENIENCE".
    - (d). Whenever a vessel is shifted to accommodate another vessel having priority at the adjacent berth and unless that vessel shifts, another vessel can not be berthed at the adjacent berth due to length restrictions such shifting is also considered as "SHIFTING FOR PORT CONVENIENCE".
    - (e). Whenever a vessel is shifted to accommodate another vessel carrying hazardous cargo which needs adjacent berth to be kept vacant for safety reasons is also considered as "SHIFTING FOR PORT CONVENIENCE".
    - (f). Whenever a vessel is shifted to accommodate another vessel on account of commodity restriction on any berth imposed by Port, it be considered as "shifting for Port convenience"
    - (g). Whenever a vessel is shifted to accommodate another vessel on account of handling restrictions on any berth imposed by Port, it be considered as "shifting for Port convenience".
    - (h). Whenever a Vessel is shifted to/from anchorage due to tidal restrictions, it will be considered as shifting for Port convenience.

- (i) Whenever a Vessel is shifted on account of Draught restrictions in the channel/bar it will be considered as shifting for Port convenience.
- (j) Whenever a Vessel is shifted to accommodate any other Vessel due to difference in draught at different berths/moorings it will be considered as shifting for Port convenience.
- (k) Whenever a Vessel is shifted to anchorage due to variation in permissible draught for day and night pilotage it will be considered as shifting for Port convenience.
- (l) Whenever a Vessel is shifted to anchorage due to allotted berth being occupied it will be considered as shifting for Port convenience.
- (m) Whenever a Vessel is shifted to anchorage to prevent idling of berth it will be considered as shifting for Port convenience.
- (n) Shifting a Vessel carried out prior and after making fast buoy moorings for reasons other than the Vessel not being in readiness will be considered as shifting for Port convenience.
- (o) Shifting a Vessel from anchorage to anchorage for Navigational convenience will be considered as shifting for Port convenience.
- (p) If a Vessel is shifted due to mal-functioning of Port equipment, clearance of berth, etc. it will be considered as shifting for Port convenience.
- (q) Chairman, KPT is authorised to enlist any eventuality including commodity and handling restrictions as Port convenience based on the recommendation of a Committee constituted for the same from time to time.
- (ii). Whenever a vessel is shifted from berth to accommodate another vessel on ousting priority, the vessel shifted is exempted from the payment of shifting charges since the same is paid by the vessel enjoying the ousting priority or the shifting is treated as for PORT CONVENIENCE when the priority vessel is exempted from payment of such charges. However, this benefit will not be applicable in the following cases:
  - (a). Non-cargo vessel which in any case have to vacate the



- berth when cargo vessels arrive.
- (b). Vessels using the berth exclusively for overside loading/discharge.
  - (c). Vessels which are idling at berth without doing any cargo handling operations.
- (5). Additional Pilotage fees shall be levied for vessels shifting to Outer Tuna Buoy (OTB). This will not be charged, however, if the vessel sails out from OTB.
  - (6). When the vessel is shifted/removed to OTB for the convenience/ousting priority of another vessel, the vessel for whose convenience the shifting takes place shall pay Pilotage fees, as applicable.
  - (7). Any pilotage carried out with restricted engine power shall be charged at one-and-half times the rates prescribed in Schedule of Pilotage fees and for piloting a vessel under 'Cold move', Pilotage fees shall be levied at double the rates prescribed in the Schedule of Pilotage fees.
  - (8). Pilotage will not be compulsory in case of vessels upto and below 200 GRT. Such vessels may, however, ask for pilot if they so desire on payment of fees as specified in the Schedule of Pilotage fees.
  - (9). Pilotage will not be compulsory for the vessels licenced under the Kandla Harbour Craft Rules, 1955 except at the time of initial entry and final departure outward.
  - (10). Whenever vessels from the Port are shifted to OTB during exigencies of cyclone/flood/ natural calamities, no Pilotage fees will be recovered for such shifts.
  - (11). The rates specified in this schedule are for pilotage from upto 3.22 kilometers (two miles) seaward of the pilot station (Outer Tuna Buoy). If, however, the vessel requires the Pilot to board the vessel beyond a point 3.22 kms seaward from the pilot station (Outer Tuna Buoy), Pilotage fees at double the rates as specified in this schedule shall be levied. Boarding of pilots shall be restricted to maximum of 9.66 kilometers (6 miles) seaward from pilot station (Outer Tuna Buoy).
  - (12). When the pilot is required to attend the vessels which are grounding, drifting, etc. attendance fees of Rs. 1116.65 per hour or part thereof for coastal vessel and US \$ 45.17 per hour or part thereof for foreign-going vessel at Vadinar Division and Rs. 1652.64 per hour or part thereof for coastal vessel and US \$ 66.85 per hour or part thereof for foreign-going vessel at Kandla Division shall be levied. For the services of tug requisitioned to attend/tow such vessels, or other vessels for any other reasons, the tug hire charges at the rate prescribed in the Scale of Rates shall be leviable.
  - (13). When the services of the pilot are requisitioned for inward pilotage or for shifting of a mechanically propelled vessel, a notice of not less than 4 hours during day time and not less than eight hours during night time shall be given. In case of outward Pilotage a notice of not less than 4 hours during day time and not less than 8 hours during night before the time the pilot is required to board the vessel shall be given. If the



services of the pilots are requisitioned within less than the aforesaid 4 hours / 8 hours as the case may be for inward Pilotage or for shifting of a mechanically propelled vessel or for outward Pilotage, then the Agents have to pay late submission charges of pilotage requisition equivalent to cancellation charges.

However in respect of vessels whose ETA is delayed for less than 3 hours and amendment letter given atleast 3 hours prior to pilot boarding time then this will not be treated as cancellation.

(14). Where the KPT or its authorised official is satisfied that the pilot cannot be posted at the time mentioned in the requisition due to non-availability of berth for the incoming ships or due to tide timings and the like, the time and date for boarding the vessel by the pilot shall be fixed by the KPT or its authorised official.

(15). No requisition will, however, be required if a pilot is required to shift/attend a vessel in an emergency beyond the control of a Master of the vessel, such as fire on board, dragging of anchor, and the like.

3.1. A. SCHEDULE OF BERTH HIRE CHARGES FOR GENERAL CARGO AND LIQUID CARGO BERTHS AT KANDLA DIVISION.

Sr. No.	Rate per GRT per 1 hour or part thereof			
	General Cargo Berths		Liquid Cargo Berths	
	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
1.	0.1125	0.0046	0.1125	0.0046

3.1. B. SCHEDULE OF BERTH HIRE CHARGES FOR SAILING VESSELS, LAUNCHES, TUGS, SMALL CRAFTS, BARGES ETC AT KANDLA DIVISION.

Sr. No.	Particulars	Coastal Vessel (in Rs.)	Foreign-going Vessel (in US \$)
1.	Sailing vessels, launches, tugs, small crafts, etc. using south, north and west wharves of Bunder Basin, Maintenance Jetty, Ferry Berths and Service Jetty at OOT (per 1 hour or part thereof).	10.8915	0.4406
2.	Vessels licenced under the Kandla Harbour Craft Rules, 1955: For use of quay berth or any berth wharf or jetty (per GRT per 1 hour or part thereof)	0.0292 (subject to a minimum of Rs.83.4152)	0.0012 (subject to a minimum of US\$3.3744)
3.	Berth hire and mooring fees for LASH barges (per 1 hour or part thereof).	13.6043	0.5503

4.	Berth hire / mooring fees / stream dues for fishing trawlers (per 1 hour or part thereof).	1.9207	0.0777
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Notes:

- (1). The Berth hire charges of a vessel shall be assessed on her total GRT (Gross Registered Tonnage) at the rate shown against the relevant vessel group according to GRT of that vessel .
- (2). Berth hire charge for non-crane general cargo berths shall be levied at 80% of the rates prescribed in this Schedule.
- (3). In the case a vessel is double banked with another vessel occupying General cargo berth or Oil jetty berth, the vessel so double banked will be charged at the rate of 50% the Berth hire charges specified above.
- (4). The cranes and equipments are supplied on the condition that the Port shall not take any responsibility for any loss or damage to life or property or break down of it at any stage which may occur or result out of use of equipment owing to any reason and that the liability of such loss/ damage/ break-down shall rest with the user/hirer of the equipment. The users will be solely responsible for damages to equipment and Port property that may occur or result during the working of equipment as per requisition on account of any reason, such as, overloading of crane, under coaming, improper slinging of cargo etc. The parties shall make good of the damages (fair wear and tear excepted) and pay to the Port all cost or repairing of damages and replacement actually incurred.
- (5). No berth hire shall be levied for the period when the vessels idle at berths due to break down of port equipment or power failure or any other reasons attributable to the Port.
- (6). A vessel after completion of discharge or loading or ballasting shall call for pilot for sailing within four hours (or within such extension granted by the Kandla Port Trust in writing for stated reasons). If the vessels do not call for the pilot for sailing within the period of four hours after completion of discharge or loading or ballasting or within such extension granted by the Kandla Port Trust or officials authorized by it, the vessel shall pay additional berth hire charges at the rate of 5 times the normal rate for the period from the time of expiry of four hours or such extended period by the Kandla Port Trust or officials authorized by it till the time of calling the pilot.
- (7). The additional berth hire charges specified in Note 6 shall not be charged for the following cases.
  - (a) Vessel waiting for tide, draft etc to sail for the safety of the vessel.
  - (b) Strike by the port employees

- (c) Loading arm disconnection problem and
- (d) Usage of idle berth with concurrence of Kandla Porto Trust or officials authorized by it.
- (e) Any other reason not attributable to the vessel or its agent.

### 3.2. SCHEDULE OF MOORING CHARGES

Sr. No	Particulars	Rate per GRT per 1 hour or part thereof	
		Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
1.	Mooring charges at Kandla	0.0256	0.001
2.	For vessels using SBM at Vadinar	0.0103	0.00042

### 3.3. SCHEDULE OF ANCHORAGE CHARGES

Sr. No	Particulars	2.1. Rate per 1 hour or part thereof	
		Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
1.	Sea-going mechanically propelled vessels:	17.9727	0.7271
(a).	Kandla OTB	5.8710	0.2375
(b).	Vadinar		
2.	Inner Anchorage (per GRT)		
(a).	Kandla	0.0182	0.0007
(b).	Vadinar	0.0123	0.0005
3.	Crafts other than sea-going vessels		
(a)	Kandla	3.4024	0.1376
(b)	Vadinar	2.2989	0.093

### 3.4. Transshipment / lighterage fees for vessels lying on their own anchors.

Particulars	2.2. Rate per GRT per 30 days or part thereof	
	Mother vessels (vessels arriving with cargo to be transferred)	Daughter vessel (vessels receiving cargo)

	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
Anchorage fees for vessels lying on their anchors in stream and carrying out transshipment / lighterage operations.				
(a) Kandla	2.7439	0.1110	0.6860	0.0277
(b) Vadinar	1.8540	0.0750	0.4635	0.0187

NOTE: This rate is applicable only in case of cargo not manifested for/from Kandla.

### 3.5. SCHEDULE OF BEACHING CHARGES

Particulars	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
Vessels lying idle in the beach (rate per GRT per calendar month or part thereof)		
(a) Kandla		
(b) Vadinar	2.0853 1.4090	0.084 0.057

General Notes relating to Schedules 3.1 to 3.5:

- (1). The period of 1 (one) hour shall be reckoned from the time the vessel occupies berth/mooring/anchorage.
- (2). No vessel shall be liable to pay both mooring fees and berth hire in 1 hour time if there is a shifting from mooring berth to quay berth or vice versa. The rate applicable at the commencement of the hour shall be charged for that hour and thereafter the rate chargeable at the new place, berth or mooring point shall be applicable.
- (3). Launches/crafts belonging to the Central/State Governments engaged in anti-smuggling activities shall be exempted from the levy of Berth hire, Mooring fees and Anchorage charges.
- (4). Where vessels are having single tonnage i.e. NRT the same will be treated as GRT.
- (5). If during the period of 1 hour time, a vessel lying at anchor at Outer Tuna Buoy or stream in Harbour area is shifted to mooring or at cargo berth, the Anchorage charges only will be charged upto the time of making fast in the mooring or berth as the case may be. The levy of Mooring fees or Berth hire will start from the point of time the vessel is made fast to mooring or berth, upto the time of unmooring or unberthing.
- (6). (i). Berth hire shall stop 4 hours after the time of the vessel signaling its readiness to sail. The time limit prescribed for cessation of berth hire shall exclude the ship's waiting time for want of

- favourable tidal conditions or on account of inclement weather or due to absence of night navigation facilities.
- (ii). There shall be a penal berth hire equal to berth hire charges of one days berth hire charge for a false signal.
- (iii). The Master / Agents of the vessel shall signal readiness to sail only in accordance with favourable weather conditions and tidal movements.
- (7). For priority berthing, fees equivalent to berth hire charges for a single day or 75% of the berth hire charges for the period of stay, whichever is higher shall be levied extra.
- (8). For Ousting priority, fees equivalent to 100% of the normal Berth hire charges for actual period of stay shall be levied extra.

### CHAPTER - III CARGO RELATED CHARGES

#### 1. SCHEDULE OF WHARFAGE CHARGES

Sr. No	Particulars of commodities	Unit	Foreign Rates (In Rs.)	Coastal rates (In Rs.)
(A)	Liquid (in bulk)			
1.	POL and products			
(a).	Crude Oil	M.T.	12.00	12.00
(b).	POL Products	M.T.	26.25	26.20
(c).	LPG	Cu.m.	100.00	60.00
2.	Edible oil – crude and refined	M.T.	30.00	18.00
3.	Non Hazardous chemicals	M.T.	30.00	18.00
4.	Hazardous chemicals	M.T.	40.00	24.00
(B)	Dry Cargoes			
1.	Fertiliser and raw material including sulphur	M.T.	24.00	14.40
2.	Food grains, cereals, pulses and oilseeds	M.T.	9.00	5.40
3.	Cement & clinker	M.T.	18.00	10.80
4.	Ores and minerals (in all forms)	M.T.	13.50	8.10
5.	Granites and marbles	M.T.	18.00	10.80
6.	Metals (Ferrous / non- ferrous) (including pipes, plates, pig iron and coil sheet)	M.T.	30.00	18.00
7.	Metal scrap	M.T.	36.00	21.60
8.	Animals (small)	Nos.	6.00	3.60
9.	Animals (big)	Nos.	24.00	14.40
10.	Animal products, bone meal, hides and skins.	M.T.	9.00	5.40
11.	Oil cakes and fodder	M.T.	9.00	5.40
12.	Waste paper and newsprint	M.T.	24.00	14.40
13.	Construction material and sand	M.T.	13.50	8.10
14.	Coal and coke (including firewood)	M.T.	18.00	10.80

15.	Wood, timber and bamboo	Cu.m.	24.00	14.40
16.	Jute & jute products and coir products.	M.T.	18.00	10.80
17.	Cotton including cotton waste	M.T.	18.00	10.80
18.	Salt	M.T.	3.00	1.80
19.	Sugar	M.T.	9.00	5.40
20.	Synthetic resin and wood pulp	M.T.	36.00	21.60
21.	Arms, ammunition, explosives and defence stores	M.T.	78.00	46.80
22.	Dry chemicals including soda ash, HDPE, PVC, LDPE, etc.	M.T.	18.00	10.80
23.	Passengers (Embarking & Disembarking)	Per Person	192.00	115.20
24.	Empty containers (upto 20 feet)	Nos.	144.00	86.40
25.	Empty container (above 20 feet)	Nos.	216.00	129.60
26.	Loaded container ( upto 20 feet)	Nos.	720.00	432.00
27.	Loaded container (above 20 feet)	Nos.	1080.00	648.00
28.	Project materials	Ad valorem	0.24%	0.144%
29.	Machinery including motor vehicles and auto components/electrical	Ad valorem	0.24%	0.144%
30.	Fruits, nuts, tapioca, coconut, Copra, tamarind seeds, etc.	Ad valorem	0.78%	0.468%
31.	All other unspecified goods	M.T.	42.00	25.20
(C)	Miscellaneous	FREE		
1.	Packing materials, ships' dunnage, ships' fittings fodder accompanying live stock and not manifested as cargo			
2.	Postal articles, Diplomatic mail, bonafide crew's luggage and personnel effects accompanying them, personnel baggage and military equipment accompanying military personnel moving on duty.			
3.	Bunkers for central and state government launches engaged in anti-smuggling activities,			
4.	Bonafide ship's stores including ship's provision.			
5.	Ship's Bunkers	50% of normal wharfage		

## Notes:

- (1). The rates of wharfage charges prescribed above in their application to cargoes other than Bulk, i.e. break bulk and non-containerised cargo

- shall be charged Rs.18/- per MT for foreign and Rs. 10.80/- per MT for Coastal cargo for supply of Port labour in addition to the above rates.
- (2). Wharfage charges for liquid bulk cargo prescribed above are applicable for handling at the Liquid Cargo Berths. If Liquid bulk cargo is handled at General Cargo Berths, 20% additional wharfage will be charged.
  - (3). 50% of the wharfage charges shall be levied as transshipment charges in the cases where the cargo discharged from the mother vessel to daughter vessel within port limits is destined to other ports. In case of transshipment of crude at Vadinar, transshipment charges of Rs. 5/- per M.T. shall be levied.
  - (4). Wharfage charges on bulk items of cargo excepting POL products (mineral oil) shall be levied on the manifested tonnage of the vessels. In the case of mineral oils, the quantity shown in out turn reports duly certified by Customs shall be the basis for levy of wharfage charges.
  - (5). 'Advalorem' charges on imports shall be calculated on CIF value; on the exports on FOB value; and on coastal cargo on value specified in the bill of coastal goods. Customs' Bill of Entry/ shipping bill/ bill of coastal goods shall be the main documents for assessing the value of cargo for wharfage purpose and where it is not available, the value will be determined based on the bill of lading/ invoices, etc.
  - (6). The advalorem rates prescribed in this Schedule are inclusive of cost of shore labour, handling, etc. Shipping documents such as Bill of lading/shipping bill shall be produced to assess the wharfage charges on CIF/FOB value of the consignments, as the case may be.
  - (7). Wharfage charges shall be leviable on the goods actually exported. Cargo brought into the Port for export, if removed for any reason, with the prior written permission of Customs Department, a fee equivalent to wharfage charges applicable for such cargo, is payable irrespective of the cargo stored on transit or rental terms.  
Fifteen days free period will be allowed to the export cargoes stored on transit terms and removed from the Port area for any reason.
  - (8). Transshipment cargo, if discharged and re-loaded on to the same vessel, single wharfage shall be leviable for both the movements.
  - (9). The wharfage shall be calculated on the total tonnage of each item of goods. For this purpose, the gross and not the net tonnage of each package, as specified in the relative invoice or other shipping document, shall be reckoned with subject to fresh check, if the circumstances so require.
  - (10). Wharfage, as applicable, will be levied on cargo discharged from one hatch of a vessel and reshipped in another for trimming or rearranging the vessel's cargo either by lighters from over side or over the docks wharves.
  - (11). Before classifying any cargo under 'unspecified category' in the wharfage / on-board and wharfage schedule, the relevant Customs classification shall be referred to find out whether the cargo can be



classified under any of the specific categories mentioned in those schedules.

- (12) For the limited purpose of recovery of wharfage charges only the term 'container' means container other than shippers' own container.

## 2. SCHEDULE OF DEMURRAGE CHARGES

### 2.1. Free Period

Sr. No.	Particulars	Imports	Exports
1.	General Cargo	5 days	15 days
2.	Timber logs	8 days	--
3.	Export cargo to be stuffed into containers	--	15 days
4.	Export cargo taken back for any reason.	--	15 days
5.	Hazardous goods	3 days	3 days

Notes:

- (1). For the purpose of calculation of free period, Sundays, Customs notified holidays and the port's non working days shall be excluded.
- (2).
  - (i). Free period for imports shall be reckoned with from the date of complete discharge of vessel's cargo.
  - (ii). When a vessel's cargo is partly discharged in stream and partly on wharf, the free period of storage in transit sheds and yards shall be reckoned with separately.
  - (iii). Free period in respect of cargo discharged in lighters in stream shall commence from the date of complete landing of the cargo on the wharf from the lighters.
  - (iv). Free period in respect of cargo landed directly on the wharf shall commence from the date of complete discharge of the cargo by the vessel.
  - (v). In case of removal of the vessel from the berth for any reason whatsoever before complete discharge of the manifested quantity, the free period shall start for the cargo so discharged from the time of the removal of the vessel from the berth.
  - (vi). When import cargo is stored in transit terms and then converted into re-export, free period will be considered from the date of filing of export documents like shipping bill.
- (3). Free period for exports shall commence from the date on which the cargo is brought in the transit / port area. The demurrage will cease from the day following the date of berthing of vessel. In case of stream loading, the demurrage will cease from the day of loading of first barge. Demurrage will cease for the total cargo actually loaded through barges to the vessel in the same voyage.
- (4). Free period on export cargo to be stuffed into container shall commence from the date on which the cargo is brought in the transit area. The demurrage shall cease from the day of stuffing (both days inclusive).



- (5). Free period for export cargo taken back for any reason shall commence from the time the export cargo is brought into the port area.
- (6). Sundays and Holidays shall be included for the purpose of calculation of free period for hazardous cargo both for imports and exports. The demurrage charges on hazardous goods shall be levied at double the normal rates specified in above schedule.
- (7). Survey Goods  
Goods detained for survey shall enjoy free storage for a period of seven days from the date of complete discharge of vessels cargo, subject to the conditions that :
  - (i) Application for survey addressed to the KPT or its authorised official is received within the normal free period applicable.
  - (ii) The importers shall submit a survey certificate indicating full particulars of cargo surveyed within 21 days after the expiry of normal free period applicable.
- (8). Salvage Goods  
The free period of seven days will be counted from the date on which the goods are actually salvaged.
- (9). Unclaimed Goods  
Unclaimed goods when sold by the Port Administration under the rules in force, a free period of seven days shall be allowed from the date of acceptance of the bid by the KPT.
- (10) For the limited purpose of recovery of demurrage charges only the term 'container' means container other than shippers' own container.

## 2.2. Demurrage Charges

Demurrage charges shall be levied on all goods left in the Port's transit sheds and yards beyond the free days, including Sundays and Holidays.

(Amount in Rs.)

Sr. No.	Particulars	Unit	Covered Area	Open Area
1.	1st week	Per M.T. or part thereof per day or part thereof.	3.00	1.50
2.	2nd week	- do -	4.50	2.28
3.	3rd week	- do -	6.00	3.00
4.	4th week	- do -	12.00	6.00
5.	5th week	- do -	24.00	12.00
6.	6th week	- do -	48.00	24.00
7.	7th week and above	- do -	96.00	48.00

Notes:

- (1). A day shall be reckoned as calendar day from 0800 hours to 0800 hours

or part thereof for the purpose of demurrage charges.

- (2). Demurrage on goods detained by Customs:
- (i). Periods during which goods are detained by the Commissioner of Customs for the purpose of special examination involving analytical or technical test other than the ordinary process of appraisalment and certified by the Commissioner of Customs to be not attributable to any fault or negligence on the part of the importers; and
  - (ii). where goods are detained by Commissioner of Customs on account of Import Control formalities and certified by Commissioner of Customs to be not attributable to any fault or negligence on the part of the importers, for such period of detention under (i) and (ii), the demurrage charges shall be recovered as under:
- First 30 days of detention : 20% of applicable demurrage  
 31st to 60th day : 50% of applicable demurrage  
 Beyond 60 days : 100% of applicable demurrage
- (3) Demurrage charges on both import & export cargo/container shall not accrue for the period when the Port is not in a position to deliver/ship cargo/container when requested by the Users.

### 2.3. SCHEDULE OF DWELL TIME CHARGES ON CONTAINERS

Period of occupation	Rate per container per day or part thereof					
	Upto 20' Container		Above 20' but up to 40' Container		Above 40' Container	
	Foreign U.S. \$	Coastal (in Rs.)	Foreign U.S. \$	Coastal (in Rs.)	Foreign U.S. \$	Coastal (in Rs.)
First 07 days	Free	Free	Free	Free	Free	Free
08 to 15 days	0.60	24.72	1.20	49.44	1.80	74.16
16 to 30 days	1.20	49.44	2.40	98.88	3.60	148.32
31 to 45 days	1.80	74.16	3.60	148.32	5.40	222.48
Above 45 days	3.60	148.32	7.20	296.64	10.80	444.96

Notes:

- (1). Import containers removed out of the Port area for destuffing/ stuffing shall be charged dwell time charges from the day following the complete discharge of the vessel till the date of removal (including the date of removal). Similarly, export containers received shall be charged dwell time charges from the date of receipt till the day prior to the date of shipment (excluding the date of shipment).

- (2). If a container has already been charged dwell time charges on a particular day, the same unit will not be charged again on the same day even if it is moved between the areas referred to above.
- (3). The dwell time charges on a container shall be levied irrespective of whether the container is stored on chassis or on ground or stacked high.
- (4). The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto 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 conditions:
  - (i). The consignee can issue a letter of abandonment at any time.
  - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
    - (a). the Line shall resume custody of container 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 necessary actions are taken by the shipping lines for destuffing the cargo.
  - (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

#### 2.4. CHARGES FOR SUPPLY OF ELECTRICITY TO REEFER CONTAINERS

Particulars	Rate per container per 4 hours or part thereof					
	Upto 20' containers		Above 20' but upto 40' containers		Above 40' container	
	Foreign U.S. \$	Coastal Rs.	Foreign U.S. \$	Coastal Rs.	Foreign U.S. \$	Coastal Rs.
Charges for supply of electricity to reefer	3.30	135.96	4.95	203.94	6.60	271.92

containers.						
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## Notes:

- (1). Refer points will be allotted on per point basis.
- (2). (i). The port reserves the right to supply power to reefer containers and shall not be responsible for any loss whatsoever that the user may incur in the event of the following:
- (a). Failure of electric supply due to reasons beyond the control of the KPT;
  - (b). The KPT's inability to supply power in time; and,
  - (c). Disconnection of the supply of power without assigning any reasons, should this become necessary for smooth operation in the Docks.
- (ii). The KPT will permit users to make their own arrangement for alternative power supply by bringing generating sets or otherwise at their own cost when power supply is disrupted / disconnected.
- (iii). Additional charges for supply of electricity to reefer points shall not be leviable for the duration of such non-supply of electric power.

## 2.5. LICENCE (STORAGE) FEES ON GENERAL CARGO

## (A). FOR OPEN SPACE

Period of occupation	Rate per 10 sq. mtr. or part thereof per month or part thereof		
	Kutchha Plots (uncemented / unasphalted) ( in Rs.)	Pucca Plots (cemented asphalted) ( in Rs.)	Bins and raised plinth ( in Rs.)
0 – 60 days			
61 – 90 days	42.00	72.00	84.00
91 – 180 days	84.00	144.00	168.00
Beyond 180 days	105.00	180.00	210.00
	126.00	216.00	252.00

## (B). FOR COVERED SPACE

Period of occupation	Rate per 10 sq. mtr. or part thereof per month or part thereof	
	(in Rs.)	
0 – 60 days		180.00
61 – 90 days		360.00

91- 180 days	450.00
Beyond 180 days	540.00

Notes:

- (1). Period for the purpose of calculation of Licence (Storage) fees shall be counted taking into account the period of stay of the cargo, both for open and covered areas.
- (2). Application for storage spaces shall be made before storage of goods to the KPT or its authorised official. Any unauthorised occupation of storage spaces shall be liable for payment of double the rent, as a penalty.
- (3). Licence (Storage) fees shall be paid in advance. Penal interest, as prescribed in point no. (vi) (b) in 1.2. General Terms and Conditions in Chapter I shall be levied on the amount due but not paid from the date on which the amount becomes due till the date of actual payment which shall in no case exceed 7 days. If, for any reason, payment is delayed beyond 7 days from the date of the amount becoming due occupation will be treated as unauthorised.
- (4). The space allotted shall be vacated on notice from the KPT or its authorised official failing which it will be treated as unauthorised occupation; and, the Port Authorities shall take other action, as deemed fit.
- (5). The KPT shall have the right to take over the spaces, allotted on rental basis, which are unoccupied/empty without any prior notice in the interest of the Port operation. In such cases, proportionate reduction in rent shall be allowed.
- (6). The day for the purpose of levy of storage charges will be from 08.00 hrs. to 08.00 hrs.
- (7). If operational area is leased on rental to users, storage charges on containers/demurrage on cargo stored therein shall not be levied again.
- (8). All the conditions/notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease rentals shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy for Major Ports 2010 announced by the Government on 13th January 2011. In case of disagreement, the conditions prescribed by the Government in the Land Policy for Major Ports-2010 shall prevail.

2.6. CHARGES FOR OFFICE ACCOMMODATION (INSIDE PORT AREA)

Basis of charge	Rate
Per sq. metre or part thereof per month	Rs.72.00

2.7. SPECIAL PORT SERVICE CHARGES ON RAIL BOUND/RAIL BORNE CARGO PASSING THROUGH THE PORT

Description	Unit	Charge payable
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Special Port service charges on rail bound/rail borne cargo passing through port	Per ton or part thereof	Rs. 4.00
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### 3. CHARGES FOR COMPOSITE RATE FOR ON BOARD LABOUR OF CARGO HANDLING DIVISION

Rate in Rs. Per MT

Sr. No.	Cargo Items	Bulk		Break Bulk	
		Foreign Rs	Coastal Rs.	Foreign Rs	Coastal Rs.
1	Fertilizer/Fertilizer Raw Material	13.96	8.37	42.92	25.75
2	Rice and other foodgrains	21.62	12.97	27.23	16.34
3	Cement	-	-	21.05	12.63
4	Steel Coils and Steel pipes	-	-	17.55	10.53
5	Timber and other logs	-	-	38.64	23.18
6	Soda Ash	-	-	60.89	36.54
7	Machinery Packages and other packages	-	-	72.84	43.71
8	Iron ore	11.14	11.14	-	-
9	Ores other than iron ore	12.20	7.32	-	-
10	Scraps	20.45	12.27	-	-
11	Oil Extractions	18.95	11.37	-	-
12	Thermal Coal	10.39	10.39	-	-
13	Other Coal	9.11	5.46	-	-
14	Salt	11.12	6.67	32.59	19.55
15	Sugar	17.42	10.45	25.80	15.48
16	All other unspecified goods	10.85	6.51	36.26	21.75

#### CHAPTER - IV MISCELLANEOUS CHARGES

### 1. SCHEDULE OF CHARGES FOR FRESH WATER SUPPLY TO VESSELS

Particulars	Rate per kilolitre or part thereof	
	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
Water supplied to vessels / Craft alongside berths		
(a) Kandla	62.671	2.535
(b) Vadinar	42.345	1.713
	Subject to minimum charges for 100 Kls.	

**Note:**

The minimum charges as prescribed shall be levied if the Owner, Master or Agent or his authorised representative of the vessel refuses to take delivery of water, as requisitioned.

**2. SCHEDULE OF CHARGES FOR ISSUE OF ENTRY PERMIT, TOKEN, CERTIFICATES & STATISTICAL STATEMENTS**

Sr. No.	Particulars	Rates
1.	Charges for issue of permanent entry permit and token.	Rs. 90.00
2.	Charges for issue of certificate and Statistical statement by Traffic and Marine departments.	Rs. 60.00

**Notes:**

- (1). No charges shall be levied from non-commercial Department of Government of India, State Governments, Committees appointed by Governments, Press Agencies or their representatives requiring statistics for publication in press.
- (2). No fee shall be charged for issue of passes/token to employees of the KPT.

**3. SCHEDULES FOR HIRE CHARGES FOR MOBILE CRANES, FORKLIFTS, ETC. FOR CARGO HANDLING PURPOSE**

Sr. No.	Particulars	Unit	Coastal		Foreign	
			Rate (in Rs.)	Min. (in Rs.)	Rate (in Rs.)	Min. (in Rs.)
1.	Forklift truck of capacity upto 3 tonnes	Per hour or part thereof	201.60	403.20	336.00	672.00
2.	Forklift truck of capacity above 3 tonnes upto 5 tonnes	-do-	223.92	447.84	373.20	746.40
3.	Pay loader (Front End Loader)	-do-	253.44	506.88	422.40	844.80
4.	Tractor (capacity upto 10 tonne)	-do-	200.16	400.32	333.60	667.20

**Notes:**

- (1). (i). The hire charges will commence from the time of dispatch of the equipment subject to maximum transit time of 30 minutes, provided the equipment so dispatched is made available for operation at work site.
- (ii). The period of detention of each occasion of 30 minutes and above on account of break down of equipment and withdrawal of the

equipment by the port for its own work during the period of requisition will be excluded for computation of the period of hire.

- (2). The parties are required to submit requisition for specified shifts/period for cranes and other cargo handling equipment by 1430 hours on working days for the 3rd shift of the day and 1st and 2nd shift of the following day. The equipment will be provided subject to availability of staff and equipment.
- (3). The parties are allowed to cancel the requisition for equipment before or after it is supplied to them by giving one hour's notice.
- (4). The conditions specified at 2 and 3 above will also be applicable to supply of wharf cranes to master/owner/agent of the vessel for cargo handling operations for which the charges are included in the Berth hire charges.

#### 4. SCHEDULE OF WEIGHMENT CHARGES

. No.	Particulars	Unit	Rate (in Rs.)
1.	For use of weigh bridge by trucks & other small vehicles	Per vehicle	30.00
2.	For use of weigh bridge by Trailors and other large vehicles	- do -	60.00
3.	For hiring weights only	For set per day or part thereof	14.40
4.	For issuing weighment certificates	Per consignment	72.00

Notes:

- (1). The attendant labour shall be supplied by the parties concerned.
- (2). No weighment charges are leviable if weighment is done in the interest of the port for the purpose of assessing Port charges.

#### 5. Schedule of charges for DIRTY BALLAST TANK, transfer / inter-transfer of POL products

Sr. No.	Particulars	Unit	Rate (in Rs.)
1.	For use of dirty ballast tanks of 4000 tones capacity	per shift of 8 hrs. or part thereof	18,600.00
2. (i).	Transfer of POL products from Dirty Ballast Tank in Old Kandla to the HPCL terminal Kharirohar and vice versa through KPT's 12" dia pipeline.	Per shift of 8 hours or part thereof	6634.80
(ii).	Diesel operated pump (600HP) Connected with 12" dia pipeline.	Per hour or part thereof	700.80



(iii).	Electric pumps (519 HP) with 12" dia pipeline	- do -	405.60
(iv).	Electric pumps (519 HP) with 16/2" dia pipeline	- do -	404.40
3.	Inter-transfer of POL products from M/s.IOC fore shore terminal to Oil companies at Kharirohar and vice versa through Kandla Port Trust pipelines.	Per shift of 8 hours or part thereof	12894.00

## General Notes for Schedules 1, 2, 4 and 5

The appliances shall be hired subject to the condition that the Port undertakes no responsibility for any loss or damage to life or property which may directly or be caused due to failure of the appliances at any stage and that the hirer shall keep the appliances in good order and condition and shall make good all damages (fair wear and tear excepted) whether by accident by fire or otherwise in all cases where the appliances are manned by the hirer themselves or otherwise. The cost of repairing the damage shall be that actually incurred for the purpose including the usual indirect and centage charges, while the cost of replacement will be either the original book value or the replacement cost whichever is higher.

## 6. SCHEDULE OF CHARGES FOR USE OF PORT FLOATING CRAFT

Sr.No.	Description	Unit	Rate at Kandla Division		Rate at Vadinar Division	
			Coastal Vessel (In Rs.)	Foreign going vessel (In US\$)	Coastal Vessel (In Rs.)	Foreign going vessel (In US\$)
A	Crafts Upto- 200 B.H.P.	Per hour or part thereof	1454.90	58.855	983.04	39.767
	201 – 400 B.H.P.		4207.34	170.20	2842.80	115.00
	401 – 1500 B.H.P		5119.07	207.08	3458.83	139.920
	1501 – 2000 B.H.P		19984.88	808.45	13503.30	546.25

	Above 2000 B.H.P.		21036.72 (subject to a minimum of Rs. 63110.16)	851.00 (subject to a minimum of US\$ 2553.00)	14214.00 (subject to a minimum of Rs. 42642.00)	575.00 (subject to a minimum of US\$ 1725.00)
B	Fire fighting craft	Per block of 8 hours or part thereof	77464.35	3133.671	52340.78	2117.345
C	Water barge 'BHIMSEN'	Per hour or part thereof	6829.36	276.269	4614.43	186.668

Notes:

- (1). Hire charges of 35 ton BP tug for pull back operations at Vadinar is subject to following conditions :
  - (i). The hire charges shall be levied per hour or part thereof. The rate per hour or part thereof shall be Rs. 16,877.889 for a coastal vessel and US \$ 682.762 in case of a foreign going vessel.
  - (ii). If the tug is hired by the oil companies in continuation before or after pull back operations, the charges will be levied at Rs.16877.889 for coastal vessel and US \$ 682.762 per half hour or part thereof for foreign going vessel.
- (2). Where the agents, owners/ masters of the vessels or other port users share the launches with the Port Trust's pilots or other officials on duty within Kandla Port Limits, subject to availability, convenience of the time, etc., each party shall pay hire charges for craft at the one third of the rate prescribed in the Scale of Rates.
- (3). Charges for hire of general purpose launches by agents or masters owners of the vessels or port users for use within Kandla Division either in mooring or anchorage shall be reduced by 50 percent of the existing rates, subject to minimum charge of US\$ 12.684 in case of foreign going vessel and Rs. 313.54 in case of coastal vessel.
- (4). Charges for hire of general purpose launches by agents or masters owners of the vessels or port users for use within Vadinar Division either in mooring or anchorage shall be reduced by 50 percent of the existing rates, subject to minimum charge of US\$ 8.57 in case of foreign going vessel and Rs. 211.85 in case of coastal vessel
- (5). If a craft at Kandla Division is shared by more than one party, the charges payable, subject to minimum charge of US\$ 12.684 in case of foreign going

vessel and Rs. 313.54 in case of coastal vessel as aforesaid, shall be equally shared by all the parties.

- (6). If a craft at Vadinar Division is shared by more than one party, the charges payable, subject to minimum charges of US\$ 8.57 in case of foreign going vessel and Rs. 211.85 in case of coastal vessel as aforesaid, shall be equally shared by all the parties.

- (7). Charges for hiring of port's tug for towing lash barges within the Kandla Port limits shall be reduced by 50% of the rates prescribed.

7. SCHEDULE OF CHARGES FOR STEEL FLOATING DRY DOCK.

Sr. No.	Particulars	Rate per vessel					
		Crafts upto 30 mtrs.		Crafts between 30 to 60 mtrs		Crafts above 60 mtrs	
		Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
1.	Docking & undocking the vessel in including 1st day hire and cleaning of dry dock.	61359.90	2481.96	73557.00	2975.61	85817.19	3471.58
2.	Dry dock hire from 2nd day to 8th day (both days inclusive) per day or part thereof	21693.06	877.55	26032.93	1053.11	30372.81	1228.68
3.	Dry dock hire from 9th day to 20th day (both days inclusive) per day or part thereof	32541.28	1316.39	39048.36	1579.63	45557.11	1842.93
4.	Dry dock hire from 21st day or part thereof	52426.78	2120.83	62912.42	2545.00	73397.11	2969.15

Sr. No.	Particulars	Coastal vessel (in Rs.)	Foreign-going vessel (in US \$)
5.	Removing and refitting keel blocks in way of repairs. Besides, special blocks, if required to be laid on account of peculiarities in the construction of any vessel	3450.03 per block	139.56 per block

## Notes

- (1). (a). Berthing and unberthing the crafts alongside the dry dock will be charged as per the Scale of Rates.
- (b). The hirer should do the cleaning of dry dock occupied area daily at his cost except for the first day failing which Rs. 5000/- per day shall be recovered from the hirer
- (2). Facilities available at dry dock viz. staging, sea water, toilet-bathrooms, etc. will be provided free of charges only during the vessels stay inside the dry dock subject to availability of the same. The Dry Dock cranes will be charged on hourly basis subject to their availability. For provision of dry dock cranes during the day shift, a hire charge @ Rs. 1270/- per hour or part thereof shall be levied. If used beyond day shift, i.e. after 1600 hours, then the charges shall be double the day shift charges including Sunday and holidays. The minimum hire period beyond day shift / Sundays and Holidays shall be four hours.
- (3). Hire period shall be counted from 0000 hours of the calendar date on which sinking operation starts and for docking till 2400 hours of the calendar date on which dewatering of the dock after undocking ceases.
- (4). Removing of garbage from dry dock will be done by the hirer.
- (5). The minimum charges payable shall be for a period of 2 calendar days and fraction of subsequent day shall be counted as one day.
- (6). When two or more vessels are docked together in the dry dock, the dry docking charges will be payable by each vessel separately.
- (7). Any damages to the dry dock during the docking/undocking operation and also during its stay inside/alongside dry dock will be responsibility of the hirer and the cost of damage/loss will be recovered from the hirer. The KPT shall not accept any responsibility / liability whatsoever for any detention of the vessel using the dry dock on account of any reasons.
- (8). The port will not be responsible for any damage/loss to the craft/crew of the craft that dry docked/berthed alongside.
- (9). For docking/undocking of vessel on Sunday/Holidays, an additional charge equivalent to 30% of the rates prescribed at Sr.No.1 of this Schedule shall levied.
- (10). 100% of the prescribed charges at Sr.No.1 this Schedule shall be levied in case the requisition for docking or undocking operations is cancelled by the hirer.  
These extra charges for cancellation of operation will not be levied if prior notice in writing is furnished to the dock incharge not later than 1400 hours on the day previous to the day fixed for operation.

100% extra charges will not be levied if cancellation of docking or undocking operations take place due to late reaching of the craft to the dry dock from OTB or from anchorage since the onus is upon the port to bring the vessel to the dry dock once the vessel reaches the OTB or anchorage for docking as per the slot awarded and the signal for docking operation is issued.

- (11). If services of tug, launch, etc. are utilised by the KPT as a requirement of the dry dock during docking / undocking operation, the same will not be chargeable.
- (12). While submitting the requisition for the dry dock, the hirer must furnish all the required details of the vessel alongwith the expected period of stay in the dry dock indicating dates.
- (13). In a situation, if any vessel is required to be dry docked before the expiry of the regulated period for which a vessel is already in the dry dock, the latter will be charged at 25% of the hire charges applicable to her for those two days viz. the day of operation and the previous day. The former vessel requiring dry dock will, however be charged remaining 75% of the hire charges applicable to the latter vessel for those two days; in addition to the normal charges leviable for her i.e. if another vessel is to be dry docked on 8th day of the stay of the vessel already in the dock, her 7th and 8th day will be charged at 25% of the applicable rate and remaining 75% of this applicable rate will be levied on the vessel requiring dry dock; in addition to normal charges leviable for her operation and stay.
- (14). When two or more vessels are occupying the dry dock and if for any reason, one of the vessels is not ready to undock on the expiry of the period for which stay of the vessel alongwith other vessel was regulated and thereby causing detention to the other vessel or vessels occupying the dry dock to undock, the Port may recover from the former vessel, in addition to the normal charges leviable, 75% of the hire charges applicable for the latter vessel or vessels during the period of detention. The vessel or vessels which are detained will, however, pay to the Port remaining 25% of the hire charges applicable for the period of detention.
- (15). In case the situation is other way round i.e. if one of the vessels in the dry dock is required to be undocked before the expiry period for which she was regulated, the other vessels occupying the dry dock and within the regulated period will be charged at the rate of 25% of the applicable rate for these two days i.e. the day of operation and the previous day and 75% of this applicable rate will be levied on the vessel requiring to be undocked before her schedule date for these two days, in addition to the normal charges leviable for her.

## 8. SCHEDULE OF CHARGES FOR VEHICLES FOR PLYING IN DOCKS

		Rate per	Rate per	Rate per
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Item No.	Classifications	day (in Rs)	month (in Rs.)	year (in Rs.)
1.	Taxis	9.00	90.00	300.00
2.	Auto rickshaws	7.20	36.00	120.00
3.	Carts	1.80	18.00	54.00
4.	Mobile cargo handling equipments (mobile cranes, fork lift, FEL, etc.)	24.00	600.00	----

Notes:

- (1). A day shall be considered as a calendar day from midnight to midnight.
- (2). The above charges shall not apply at OOT Vadinar.

9. Schedule OF CHARGES FOR HIRE OF ELECTRIC WHARF CRANES IF HIRED FOR HANDLING CARGO OTHER THAN TO AND FROM SHIPS/ BARGES

Per hour per crane	Foreign	Rs. 960.00
	Coastal	Rs. 576.00

Notes:

- (1). One hour notice in writing shall be given for cancellation of crane requisitioned as otherwise charges as prescribed for half shift shall be levied except on holidays for which notice of 24 hours is required failing which charges for two shifts will be levied.
- (2). Cranes will normally be made available for work during the shift hours as fixed from time to time. If cranes are required during the recess time due notice shall be given to the KPT or its authorised official well in advance; and, compliance with such requisitions will be subject to exigencies and discretion of the KPT.
- (3).
  - (i). A load greater than their marked lifting capacities shall not be put on the cranes.
  - (ii). Sling of import goods shall be made up directly under the open hatch way of any vessel unloading at quays and under no circumstances what-so-ever shall cranes be employed for the purpose of breaking out or removing goods from under the coaming.
  - (iii). The cranes shall be used alone and no other lifting gear shall be used in conjunction with them on any of lift without the permission in writing of the Traffic Manager.
  - (iv). Ship's officer must see that the Port crane work quite clear of ship's gear and of all obstructions.
  - (v). Heavy lifts of over 1,000 kgs. shall be declared by the Master of the vessel who shall be responsible for all accidents arising from mis-declarations.

- (vi). Cranes will be supplied only if available on the condition that the port shall not be responsible for any loss, damage or breakdown of any sort which may occur or result from the use of the cranes and that the liability for any such loss, damage or break down shall fall on the vessel for which the crane or cranes may be working for the time being.
- (vii). No cargo shall be discharged from any vessel at a quay except under the supervision of the Master or Owner of the vessel or his Stevedores. Such Master or Owner or Stevedores shall be personally responsible to the Port for any loss or damage to life, limb or property arising from the carelessness of importer slinging of goods on board such vessels.
- (viii). Master and Owner of vessels lying at a quay and their stevedores will be personally and severally responsible for proper provision of lights in those parts of the ship where work is being carried on in any way connected directly or indirectly with the use of port's quay and other property. In default, they shall be responsible to the port jointly and severally in respect of any loss or damage to life, limb or property which may result.
- (ix). After commencement of operations of wharf cranes on hire, if there occurs stoppage of wharf operations due to power shut down or for any other reason not attributable to the hirer for a continuous period of not less than 30 minutes on each occasion the hirer shall be entitled for a deduction at the rate of Rs.84.14/- per hour in respect of foreign going vessel and Rs.56.10/- per hour in respect of coastal vessels for the duration of such stoppage of work. For this purpose, the period of stoppage in excess of 30 minutes will be rounded off to the next quarter of an hour.

“10. Charges for Hire of Mobile Harbour Crane of 60 tonne Capacity

(I). For Dry Bulk Cargo

Average daily crane performance (in Metric Tonne)	Rate per tonne (in Rs.)	
	Foreign	Coastal
7000-7999	19.61	11.77
8000-8999	20.76	12.46
9000-9999	21.92	13.15
10000	23.07	13.84
10001-11000	24.22	14.53
11001-12000	25.38	15.23
12001-13000	26.53	15.92

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes and for the 2nd thousand tonnes

the rate was enhanced to 110% of the base rate. The rate for third thousand tonnes was arrived by enhancing the base rate by 115%. The same methodology shall also be adopted to calculate the rate beyond 13000 tonnes. Likewise, ceiling rates for performance below 7000 tonnes shall be calculated by reducing the base rate accordingly.

(II). For Break-bulk cargo:

(A). Steel and Bagged Cargo

Average daily crane Performance (in Metric tonne)	Ceiling rate per tonne (in Rs.)	
	Foreign	Coastal
3000-3999	54.80	32.88
4000	57.68	34.61
4001-5000	60.56	36.34

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 5000 tonnes. Likewise, ceiling rates for performance below 3000 tonnes shall be calculated by reducing the base rate accordingly.

(B). Other break bulk cargo including timber logs

Average daily crane Performance (in Metric tonne)	Ceiling rate per tonne (in Rs.)	
	Foreign	Coastal
1500-2499	87.52	52.51
2500	92.13	55.28
2501-3500	96.74	58.04

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 3500 tonnes. Likewise, ceiling rates for performance below 1500 tonnes shall be calculated by reducing the base rate accordingly.

Notes:

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

$$\frac{\text{Total Quantity loaded / unloaded by the MHC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hours}$$



- (ii). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.
- (iii). If one MHC works with another MHC, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the MHC load meter.
- (iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by MHC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (v). In case of stoppages of operation of MHC for more than two hours at a stretch for reasons not attributable to the MHC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of MHC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the MHC. All stoppages in loading / unloading operations during working of MHC are required to be certified by the KPT Officers or any other agency nominated by the KPT in the daily vessel performance report.
- (vi). No shifting charge shall be levied by the port in case shifting of a vessel from berth to another berth/ anchorage become necessary due to breakdown/ non-performance of MHC.
- (vii). In case of dispute on the average output, the decision of the port trust will be final and binding. "

## CHAPTER – V

### RATES FOR TUNA PORT

#### SCHEDULE I – PORT DUES

Sr. No.	Particulars	Rate per GRT or part thereof		Frequency of levy
		Foreign going vessel (in US\$)	Coastal Vessel (in Rs.)	
1.	Vessels of 10 GRT & upwards (except fishing boats)	0.075	1.05	Payable on each entry
2	Sailing vessels of 10 GRT & uards (except fishing boats)	0.045	0.90	

Notes:

- (i) Port Dues will be charged based on the status of the vessel at the time of its entry into the port limits.

SCHEDULE II – BERTH HIRE CHARGES

Sr. No.	Particulars	Rate per GRT per hour or part thereof	
		Foreign going vessel (in US \$)	Coastal Vessel (in Rs.)
1.	Vessel upto 10 GRT	Free	Free
2.	Vessels above 10 GRT	0.0019	0.03

SCHEDULE III – BEACHING CHARGES

Sr. No.	Particulars	Rate per NRT per month or part thereof	
		Foreign going vessel (in US \$)	Coastal Vessel (in Rs.)
1.	Beaching charges	0.015	0.30

SCHEDULE IV - WHARFAGE CHARGES

Sr. No.	Particulars of commodity	Unit	Other than Coastal Cargo (in Rs.)	Coastal Cargo (in Rs.)
A	LIQUID CARGO			
1	POL products in bulk other than crude oil	M.T. or part thereof	15.00	9.00
B	Other liquid cargo including bunkers	M.T. or part thereof	15.00	9.00

	DRY CARGO				
3	Fertilizer and raw material including sulphur	M.T. or part thereof	15.00	9.00	
4	Food grains, cereals, pulses & oil seeds	M.T. or part thereof	7.50	4.50	
5	Cement & clinker	M.T. or part thereof	12.00	7.20	
6	Ores & minerals in all forms	M.T. or part thereof	11.25	6.75	
7	Granites and marbles	M.T. or part thereof	15.00	9.00	
8	Metals (Ferrous/ nonferrous & metals scrap including pipes, plates, pig iron, coil sheets and cokes)	M.T. or part thereof	15.00	9.00	
9	Animals including chicken, sheep and goats	each	5.00	3.00	
10	Animals (other than above)	each	12.00	7.20	
11	Animal product, bone meal, hides and stems	M.T. or part thereof	7.50	4.50	
12	Oil cakes fodder	M.T. or part thereof	7.50	4.50	
13	Waste paper and newsprint	M.T. or part thereof	13.50	8.10	
14	Construction material and sand	M.T. or part thereof	11.25	6.75	
15	Coal and Coke (including firewood)	M.T. or part thereof	12.00	7.20	
16	Wood timber and bamboo	M.T. or part thereof	10.50	6.30	
17	Jute and Jute products and coir products	M.T. or part thereof	10.50	6.30	
18	Cotton including cotton waste	M.T. or part thereof	9.00	5.40	

19	Salt	M.T. or part thereof	2.50	1.50
20	Sugar	M.T. or part thereof	7.50	4.50
21	Asbestos	M.T. or part thereof	9.00	5.40
22	Synthetic resin and wood pulp	M.T. or part thereof	15.00	9.00
23	Arms, ammunition, explosive and defence stores	M.T. or part thereof	18.00	10.80
24	Dry chemicals including soda ash, HDPE etc.	M.T. or part thereof	10.50	6.30
25	Other unspecified goods	M.T. or part thereof	15.00	9.00

## Notes

- (i) Break bulk cargo shall be charged Rs. 15/- per MT for supply of port labour in addition to the above rates.
- (ii) Wharfage charges shall be levied on the goods actually exported.
- (iii) Before classifying any cargo under 'unspecified category' in the wharfage /on-board and wharfage schedule, the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in those schedules.

## SCHEDULE V - RENTAL FEES

Sr. No.	Particulars	Rate per 10 sq. mtr. or part thereof per month or part thereof (in Rs.)
1.	For open space	7.50
2.	For covered space	48.00

3.	Storage of timber on board	Rate per 10 sq. mtr. or part thereof per day or part thereof (in Rs.)
		1.50

#### SCHEDULE VI - TROLLEY HIRE CHARGES

Sr. No.	Particulars of commodity	Rate per day or part thereof (in Rs.)
1.	Trolley hire charges	15.00

#### General Notes

- (i). Whenever no specific rate is available, the rate prescribed for the corresponding items at Kandla will apply provided the relevant services offered/facilities provided at Tuna Port are at par with those at Kandla Port.
- (ii). The terms and conditions of rendering the services at Tuna will be same as prescribed for corresponding services at Kandla provided for comparable services offered/facilities provided.
- (iii). The aggregate amount of bill shall be rounded off to the next higher rupee.

#### CHAPTER – VI

#### LEASE RATE FOR LEASE OF KANDLA LANDS BELONGING TO KANDLA PORT TRUST

Sr. No.	Description of category	Lease Rentals per sq. mtrs. Per annum as on July 1999 (Rs.)	Lease Rentals per sq. mtrs. Per annum as on 1st January 2004 (Rs.)	Lease Rentals per sq. mtrs. Per annum as on 1st January 2009 (Rs.)
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	41.40	53.40	110.40
B	Land within half mile from the bank of the creek and having no water front			
B1	Plots abutting on main road	33.60	43.20	89.40
B2	Plots situated on internal roads	30.00	39.00	80.40

C	Land beyond half a mile from the bank of the creek			
C1	Plots abutting on main road	30.00	39.00	80.40
C2	Other plots	24.60	31.20	64.80
D	Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway			
D1	Plots directly abutting on NH-8A	37.80	48.60	100.20
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	33.60	43.20	89.40
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	32.40	41.40	85.20
E	Land within the docks	67.80	87.60	180.60
F	Land west of railway siding leading to Kandla Free Trade Zone and upto crossing of railway line			
F1	Plots situated on SEZ side from Kandla Railway Station	37.80	48.60	100.20
F2	Plots situated on Ahmedabad side from Kandla Railway Station	36.00	46.20	94.80
G	Land of Liquid Storage Tanks situated at Old Kandla, between railway siding and leading to M/s. IFFCO and M/s. IOCL ((LPG)	167.40	214.80	442.80

- Note: (i) The lease rentals shall bear an escalation @ 5% (compoundable) per annum for the period July 1999 to 24 February 2004 and @ 2% thereafter.
- (ii) All other conditions governing the lease rentals shall be as per the guidelines by the Ministry of Shipping as may be amended from time to time.

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## APPENDIX 14

### MINIMUM GUARANTEED CARGO

The period starts from start of 1st commercial operation year or 24 months from Award of concession whichever is earlier.

Operation Year	Minimum Guaranteed Tonnage (Million Tonnes per annum)
1	0.85
2	1.19
3	1.53
4	1.86
5	2.37
6	2.37
7	2.37
8	2.37
9	2.37
10	2.37
11	2.37
12	2.37
13	2.37
14	2.37
15	2.37
16	2.37
17	2.37
18	2.37
19	2.37
20	2.37
21	2.37
22	2.37
23	2.37
24	2.37
25	2.37
26	2.37
27	2.37
28	2.37
29	2.37
30	2.37

## APPENDIX 15

### PERFORMANCE STANDARDS

#### Performance Standards

##### 1. Gross Berth Output

The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of 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 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 2 hours/day shall be subtracted from the total hours.

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

Cargo Category	Indicative Norms
<b>Liquid Bulk</b>	
POL Products	1000T/H
Other Liquids	300T/H

Weightage in case of a shortfall in meeting the prescribed performance standard - 50%

##### 2. Transit Storage Dwell Time:

###### **Liquid Cargo:**

**The Transit Storage Dwell Time** for /liquid cargo 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:

$$\text{Average disposal of Cargo per day (A)} = \frac{\text{OB} + \text{Received} - \text{Despatched} - \text{CB}}{\text{No. of days}}$$

OB = Opening Balance, CB = Closing Balance.

$$\text{Average Parcel Sizes (B)} = \frac{P_1 + P_2 + \dots + P_n}{n(\text{no. of parcels})}$$

P<sub>1</sub>, P<sub>2</sub> ..... P<sub>n</sub> are parcel size of each vessel in a month.

Transit Storage Time for liquid Cargo = 0.5 (B/A)

Weightage in case of a shortfall in meeting the prescribed performance standard - 50%

#### 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  $x\%$ , Transit Storage Dwell Time by  $y\%$  and Turn round time for receipt/delivery operations 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  $(0.7x + 0.2y + 0.1z)\%$ .

## 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 and having its registered office at [●] (hereinafter referred to as the **“Concessionaire”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **“Lenders' Representative”** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the **“Escrow Bank”** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES for \_\_\_\_\_ PORT, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at \_\_\_\_\_, hereinafter referred to as **“the Concessioneing Authority”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);  
\_\_\_\_\_  
\_\_\_\_\_

**WHEREAS:**

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

NOW IT IS HEREBY AGREED as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

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

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

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders' Representative**” means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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

“**Quarter**” means, any three month period from 1<sup>st</sup> April to 30<sup>th</sup> June, 1<sup>st</sup> July to

30<sup>th</sup> September, 1<sup>st</sup> October to 31<sup>st</sup> December or 1<sup>st</sup> January to 31<sup>st</sup> March.

## **1.2 Interpretation**

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

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

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

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

## **2. ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

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

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

### **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the

Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the 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 Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### **2.3 Establishment and operation of Escrow Account**

2.3.1 Within 30 (thirty) Days from the date of this Agreement, and in any case prior to the Date of Award of Concession, the Concessionaire shall open and establish the Escrow Account with the [(name of Branch)] Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Lenders/Lenders Representative and thereafter by the Concessioneing Authority.

2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

### **2.4 Escrow Bank's fee**

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

### **2.5 Rights of the parties**

The rights of the Concessioneing Authority, the Lenders (through the Lenders'

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

## **2.6 Substitution of the Concessionaire**

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

## **3 DEPOSITS INTO ESCROW ACCOUNT**

### **3.1 Deposits by the Concessionaire**

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

- (a) all monies received in relation to the Project from any source, including the 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 Concessioneing Authority or such other authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

## **4. WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals during Concession Period**

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the

relevant Sub-Accounts for making due payments in a month :

- (a) all taxes due and payable by the Concessionaire; towards License Fee;
- (b) 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;
- (c) 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;
- (d) towards its debt service obligations under the Financing Documents;
- (e) towards Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
- (f) towards any reserve requirements in accordance with the Financing Documents;

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

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

#### **4.2 Withdrawals upon end of Concession Period**

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

towards taxes and statutory dues payable by the Concessionaire;

- (i) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (ii) 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 Lenders and the Concessioneing Authority and the Escrow Agent has received a confirmation of final settlement by the Lenders and/or Concessioneing 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 Concessioneing Authority.

### **5. OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

#### **5.2 Notification of balances**

7 (seven) business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the



Escrow Account as at the close of business on the immediately preceding business day.

### **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, relays to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business Days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

### **5.4 No set off**

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

### **5.5 Regulatory approvals**

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

## **6 ESCROW DEFAULT**

### **6.1 Escrow Default**

6.1.1 Following events shall constitute an event of default by the Concessionaire (an **"Escrow Default"**) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessioneing Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit/cause the deposit of any receipts into the Escrow Account;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement;
- or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## **7. TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to the 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 Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing

Documents including the payments specified in Article 4.2, and upon confirmation' of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8. SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Escrow Account, creation of sub-accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of Financing Documents, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## **8. INDEMNITY**

### **9.1 General indemnity**

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

9.1.2 The 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.

## **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 [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **10.2 Waiver of sovereign immunity**

The Concessioneing 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 Concessioneing Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **10.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **10.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **10.5 Waiver**

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

10.5.2 Neither the failure by any Party to insist on any occasion upon the

performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **10.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **10.7 Survival**

##### **10.7.1 Termination of this Agreement:**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### **10.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

#### **10.9 Successors and assigns**

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

#### **10.10 Notices**

Unless otherwise stated, notices to be given under this Agreement including but

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

The Concessioning Authority:

CHAIRMAN

\_\_\_\_\_PORT

Fax No:

Email:

The Concessionaire:

The MANAGING DIRECTOR

\_\_\_\_\_Ltd

Fax No.

Email:

The Lenders/Lenders representative:

\_\_\_\_\_Ltd

Fax No.

Email:

The Escrow Bank:

\_\_\_\_\_Ltd

Fax No.

Email:

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

### **10.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

### **10.12 Authorised representatives**

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

### **10.13 Original Document**

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

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)



(Name)  
(Designation)  
(Address)  
(Fax No.)

In the presence of:

- 1 .
- 2 .

## APPENDIX 17

### RESPONSE TO PRE BID QUERRIES as Approved by KPT Board

Sr. No.	Description/ Clause No	Reference/ Present Clause	Queries	Clarification
1	1.1.3	Brief Details of the Proposed Project	It is requested that the responsibility of dredging from the Zero Panel to the Oil Jetty Complex is undertaken by the Concessionaire	The Provision of DCA hold good
2	2.1	Pro-rata Cost of Capital and Maintenance Dredging from Zero Panel to the Oil Jetty Complex	It is requested that the entire cost of Capital and Maintenance Dredging of the navigation channel and from Zero Panel to the Oil Jetty Complex is borne by the Concessionaire.	The Provision of DCA hold good
3	3.1 (x) (b) (i)	Procurement of Environment Clearance by the Concessionaire	Please confirm that the Environmental Clearance including CRZ clearance, if applicable, shall be obtained by the Concessionaire for all products including Class A chemicals, envisaged to be handled at the Terminal.	The Environment/ CRZ Clearance for the project for handling of cargo permissible as per CRZ Guideline is being obtained by KPT
4	3.1 (x) (b) (ii) (a)	Payment of License Fee and Upfront Fee	<p>Payment of License Fee for the land should be effective only after the land is handed over with permits so that the construction work can commence.</p> <p>We therefore request that the payment of Licensee Fee is applicable from the date of handing over the land, free of all encumbrances and with Environmental and CRZ clearances.</p>	Please refer article 9.1 (a) read with Article 3.1(b) and Appendix - 2 of DCA, the License Fees shall be paid by concessionaire annually in advance. Further, License Fee shall be payable from date of handing over of physical possession of project site, port assets to enable the Concessioning Authority to fulfill the Condition Precedent 3.1 (b) (ii). Farther, the Project site shall be handed over on "as is where basis"
5	9.1 (b)	One Time upfront fee of Rs.1.41 Crore	<p>Kindly clarify whether the entire backup land is filled and reclaimed and this amount is for the cost incurred by the Port for these activities</p> <p>Please confirm that this sum is payable upon handing over the hand free of all encumbrances and after obtaining the Environmental/CRZ clearance</p>	<p>Please refer Clarification to Query Sr. No. 4</p> <p>The land area for proposed tank farm is partially reclaimed i.e. already carried out some of the land filling.</p> <p>Further, handing over of physical possession of project site is not connected with Environment/ CRZ Clearance of the Project.</p>
6	Appendix 1	The terminal shall be used for unloading/loading all kinds of liquid	Kindly clarify that the liquid cargo would also include chemicals including Class A chemicals and that there would	Only The Cargo items which are permissible under CRZ Guideline 2011 and its amendment from time to time if any, can be handled/

		cargo.....	be no restrictions in the range of cargo that can be handled at the Project facility	stored at proposed facility.
7	Appendix 2	Land Area indicated as 6.55 Ha	Land Area indicated under Appendix 4 is 5.5 Ha. We request clarification on the actual extent of land that will be allotted as part of the Project.	Please refer appendix 2 of the DCA, the land area at measuring to 6.55 Ha (approx) will be physically hand over to the concessionaire for development of project facility and services. Tentative Breakup of the land area is as under (i) Jetty, Approach Bridge, Connecting Platform, Fire House, High Mast Towers and Crew Office - 1.05 Ha (ii) Tank Farms 5.5 Ha.
8	Appendix 4 Project Requirements	Salient Features of the Berth – Length, Width, Trestle etc	We request clarification that the Concessionaire shall have the freedom to design and equip the berth based on market requirements, subject to minimum Project Requirements being met	Yes, Subject to development of project facility should meet with all relevant provisions laid down in DCA.
9	Appendix 15	Norms for Handling Rate of POL is assumed at 1000 tons per hour and 300 MT per hour for other liquids	The proposed terminal is multiproduct in nature and the parcel sizes range from 500 MT to 45,000 MT. Considering the likely range of vessels expected to call, it is suggested to revise the handling rates as below: <ul style="list-style-type: none"> <li>• Bunker fuel loading rate at 300 tons per hour</li> <li>• POL handling rate at 750 tons per hour</li> <li>• Other liquids at 300 tons per hour</li> </ul> <b>Remark:</b> <ul style="list-style-type: none"> <li>• Some of POL products are highly volatile and some are highly viscous in nature. Such products are to be handled at lower rates.</li> <li>• Rate of loading marine tankers would be limited by the nature and properties of the cargoes.</li> <li>• Rate of bunkering to barges would be at 100 to 300 MT per hour which would bring down the average handling rates for POL cargoes</li> </ul>	The Handling rate of liquid cargo is as per the TAMP Guideline – 2008 for Fixation of upfront tariff.
10	Appendix 15	Norms for Handling Rate of POL is	We note from the Feasibility Report (page 59) that 10 inch	Please refer Article 2.1.3 of RFP. The Feasibility Report of the Project is

		assumed at 1000 tons per hour and 300 MT per hour for other liquids	and 8 inch pipelines are considered. With such smaller pipelines, high discharge rates of 1000 MT per hour cannot be achieved.  We suggest that pipelines of adequate diameters (16/18 inches) are considered for POL products in the Project Requirements and the Capital Cost is revised suitably.	provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Farther also refer Appendix 4 of DCA,
11	CRZ	General	Whether the proposed area of tankages come under CRZ area, and if so, kindly advice the class of chemicals, POL or other liquid cargo which will not be permitted to be stored and handled from the proposed storage area	As per CRZ notification – 2011, the land for proposed tank farm of the Project is located with CRZ. Accordingly, the cargo that can be stored in the proposed tank farm may be referred from the aforesaid notification and its amendments from time to time if any.
12	Common manifold	General	Whether the proposed jetty would be connected to the common manifold, and therefore, can pump and store products in other tank farms also?	The Cargo to be handled on the Project can only be stored in the Tank farm of the Project. However, as per Article 12.1 (h) of DCA. The Concessionaire may allow the pipeline connectivity from the point within its Licensed Premises to other liquid storage facilities for the movement of liquid cargo handled/to be handled at Project Facilities and Services. However, the same would be subject to compliance of all the Applicable Laws/Permits/Clearances required in accordance with this Agreement and also required by any other Authority than the Concessioning Authority.
13	Dredging	DCA	The Concessionaire is required to carry out capital and maintenance	The Quantity of Dredging may be referred from Tariff order approved by TAMP, which had

			dredging to maintain -14.1 mtr. Depth alongside jetty and 13 mtr. draft from its approach upto navigational channel in the Kandla Creek. Kindly provide the quantity of dredging required for this, separately for (a) Capital Dredging; and (b) Maintenance dredging	already be sent all Bidders on 23-02-2013.
14	Dredging	DCA	The Concessionaire is required to bear the cost on pro-rata basis of capital and maintenance dredging for deepening of navigational channel upto 13 mtr draft from zero panel to oil jetty complex. Kindly provide the pro-rata cost separately for (a) Capital Dredging; and (b) Maintenance dredging. Also provide the basis for allocation of cost on pro-data basis	The Cost of Dredging may be referred from Tariff order approved by TAMP, which had already been sent to all Bidders on 23-02-2013.
15	Commercial Information	General	Kindly provide the following information: <ol style="list-style-type: none"> <li>1. For Last two years, product -wise imports (with product name)</li> <li>2. For last two years, product -wise exports</li> <li>3. For last year, name of parties who imported or exported cargo (this list to be made product wise)</li> <li>4. Capacity of each berth and throughput at each berth</li> <li>5. Type and volume of cargo handled at IOC captive berth</li> <li>6. Type and volume of cargo handled at</li> </ol>	Please refer clarification to Query no 10  Moreover, the prevailing KPT

			<p>IFFCO captive berth</p> <p>7. Product wise storage capacity in KPT, and also no. of tanks</p> <p>8. Product wise storage capacity outside KPT area, and also no. of tanks</p> <p>9. Charges prevailing in KPT (handling charges and storage charges)</p>	SOR is appended as Appendix 13 of DCA, Which may be revised time to time.
16	Bore log details	DFR-sub-soil profile pg.20	The soil strength parameters and density of the soil strata are required for the Terminal including Marine, P/L Corridor and Tank-farm locations.	The details may be referred from the Port Office.
17	Bathymetry Survey	General	Please furnish the Bathymetry survey drawing from shore line to approach channel at the proposed site location.	The details may be referred from the Port Office.
18	Topography Survey	General	Please furnish Topography survey including Site location, Land dimension and survey details for the proposed facility Jetty, Storage and pipeline corridor.	Please refer the drawing appended with Appendix 1& 2 of DCA
19	Soil Investigation Report	General	Please furnish the Soil investigation report of Terminal & Pipeline Corridor.	The details may be referred from the Port Office.
20	Size of Vessel	General	Minimum size of vessel is required for the design of fender and fender beam. Also the dimensions are required for the smaller and higher DWT vessels. However with the proposed Wharf wall proposal, in line with the Draft Concession Agreement (DCA) requirement, the minimum size of the vessel which could be accommodated is	Please refer Appendix 4 of the DCA.

			10000DWT.	
21	Battery Limit	General	Battery limit (with coordinates) of proposed port terminal including the backup area and right of way for the pipe corridors required to plan the facilities	Please refer Drawing appended with Appendix 1 of DCA.
22	Zero panel location	DFR Cl. 6.1	Please indicate the Zero panel location and the bathymetric drawing showing the sounding details from zero panel to the Wharf location.	Please refer Drawing appended with Appendix 1 of DCA.
23	Current detail	DFR- Storms & Cyclones pg.20	The details of current velocity at the storm time are required.	Please refer Clarification to Query no 10
24	General configuration of Jetty	DFR- Project Snapshot,pg.6	To handle the two smaller vessels on the jetty, dimensions of the vessels are required. Based on that, jetty configuration will be finalized.	Please refer Clarification to Query no 10
25	Bollard Capacity	DFR “Block Estimate” and DCA pg.123	Bollard capacity differs in tender document. In the DFR “Block Estimate”, 250T Bollard is mentioned whereas in DCA pg.123, it is mentioned as 100T. Please confirm which one to consider?	The provision of DCA hold good.
26	Vessel Velocity	General	The approach velocity of vessel is required to calculate the berthing energy.	Please refer Clarification to Query no 10
27	Approach Bridge connecting platforms	General	Please confirm that we will consider the size of approach bridge connecting platforms as 114m x 10m?	Please refer Appendix 4 of the DCA
28	Reclaimed Soil	General	Please provide the details of the filled soil in the reclamation area. Kindly provide filled soil strength parameters.	Please refer Clarification to Query no 10
29	Bunkering barge	General	Please specify the barge sizes used for the	Please refer Clarification to Query no 10

			bunkering.	
30	Tank Configuration	General	Please provide Service wise Tank details ( No. of Tanks, Service , Capacity & Properties) for POL , Bunker Fuel & Other Liquids etc.	Please refer Clarification to Query no 10
31	Pipeline Configuration	General	Service & Size of Pipelines to be provided.	Please refer Clarification to Query no 10
32	SS Pipeline	General	To clarify that SS line is indicated but SS tanks is not specified.	Please refer Clarification to Query no 10
33	Product Handling	General	Number of loading arms at gantry and jetty product wise and also the loading/unloading rate for each product.	Please refer Clarification to Query no 10
34	Ammonia and phos. Acid handling	General	Quantity and rate of ammonia and phosperic acid loading/storage and its operating parameter.	Please refer clarification to query no 3 & 10. Also refer TAMP order for the required details for commodities referred with respect to relevant cargo group.
35	Slop Handling	General	Requirement of slop handling facilities, Pig launcher / receiver at jetty / tank farm.	Please refer Clarification to Query no 10
36	Utility	General	Quantity and location of source of utilities like power, water (potable, service and fire) to be provided.	Please refer Article 7.2 of DCA
37	Truck Loading Gantry	General	To provide the details of Road gantry that need to be developed for loading the cargo to the tank lorry and unloading from the same if required.	Please refer Clarification to Query no 10
38	OISD recommendati on	General	Class wise distribution of POL Tanks to meet the relevant OISD standards to get PESO approvals.	Please refer Clarification to Query no 10
39	OISD recommendati on	General	Firefighting equipment for Jetty like Tower Monitor	Please refer Clarification to Query no 10



			etc.	
40	Oil Spill Collection	General	Oil spill equipment- Whether KPT will provide	Please refer Appendix 4 of DCA
41	Product Handling	General	To clarify whether Flow meters to be considered at Jetty / Gantry & degree of automation	Please refer Appendix 4 of DCA
42	Product Handling	General	Compressor for Flushing Air – whether to be considered	Please refer Appendix 4 of DCA
43	Drainage system	General	To provide location of Out fall of Drainage system and whether ETP to be considered	Please refer Clarification to Query no 10
44	Product Handling	General	To provide details of Instrumentation system for Jetty & Tank Farm, Product handling etc	Please refer Appendix 4 of DCA
45	Bunkering	General	To clarify Bunkering through Loading Arm or Hose	Please refer Appendix – 4 of DCA
46	Statutory Approvals	DFR-Pg No 391	To specifically provide the approvals to be obtained by the Developer and the approvals to be obtained by KPT.	Please refer Appendix 8 of DCA
47	Fire Water Line	Cost estimate	The fire water line has not been considered in the cost estimate. Whether the same has to be considered.	The cost of fire waterline may be considered to be included in Estimated Project Cost through the heads like Fire Fighting Arrangement as well as the Ancillary Items.
48	Lab Testing Facilities	General	The details of the testing requirement to be provided.	Please refer Appendix 7 of DCA

Verbal Queries clarified during pre-bid meeting				
49				Tank Farm for Bunker Fuel, in case it is vacant, can be used to store POL and other liquids in accordance with CRZ Guidelines, 2011 and its amendments from time to time.
50				As per RFP Article 2.1.8 <i>“The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, <b>inclusive of a claim period of 60 (sixty) days</b>, and may be extended as may be mutually agreed between the Authority and the Bidder.”</i>
51				As per Article 7.1 (a) (x), <i>“The costs and expenses in regard to the whole of the security including the CISF personnel shall be borne by the concessionaire.”</i> Moreover, such costs and expenses may be paid to CISF through the Concessioning Authority.
52				Regarding upfront tariffs for cargo of special types, it is clarify that as per 11.5 para of approved tariff order “The upfront tariff approved by TAMP is with reference to the handling of certain liquid cargo at the facility. If there is any change in the cargo profile, the upfront tariff will have to be reviewed.”
53				In accordance with Article 9.3 of DCA, request of the Concessionaire for Additional Land for Project Facilities and Services may be considered by the Concessioning Authority subject to the availability of the same.