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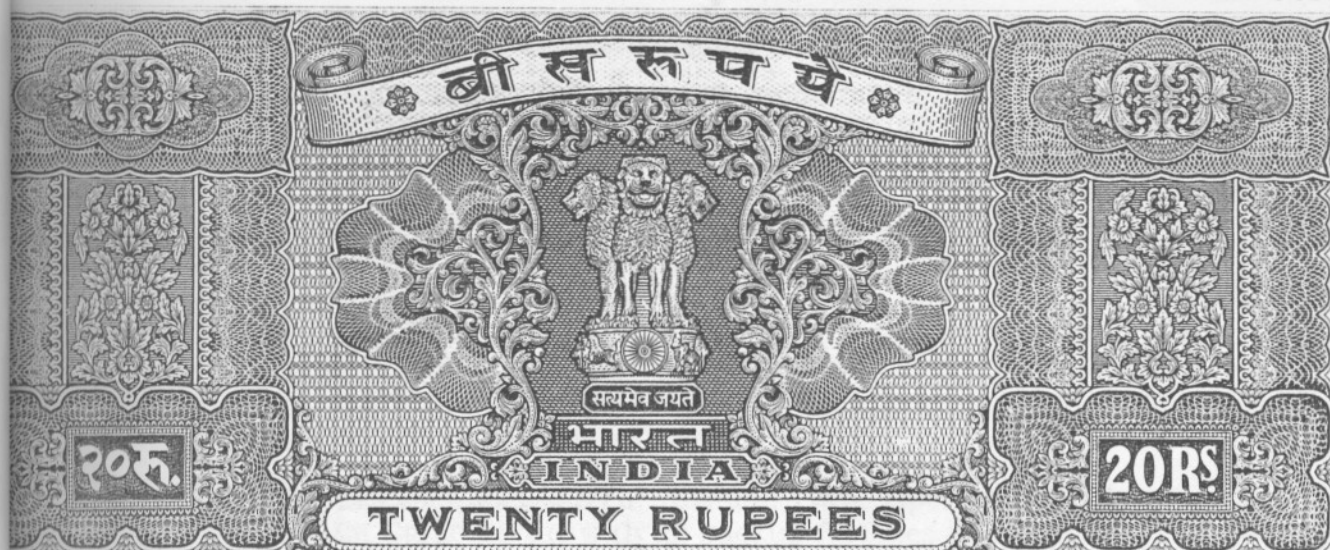
THIS LICENCE AGREEMENT is made and entered into this 11<sup>th</sup> day of April 1999 BETWEEN :

THE BOARD OF TRUSTEES OF MORMUGAO PORT, constituted under the Major Port Trusts Act, 1963, having its offices at Mormugao, Goa, hereinafter referred to as the **Licensor**, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the first part, AND

ABG GOA PORT PVT. LTD., a company incorporated and registered in India under the Companies Act, 1956, and having its registered office at Vasco-da-Gama, Goa, hereinafter referred to as the **Licensee**, (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the second part;

Each of the Licensor and the Licensee shall be referred to herein as a "**Party**" and collectively as "**Parties**".

WHEREAS, the Licensor is desirous of developing two Multipurpose Bulk Cargo berths with all backup facilities and equipment;



WHEREAS, in April 1995, the Licensor issued a global notice inviting bids from interested parties for "CONSRUCTION AND OPERATION OF TWO MULTIPURPOSE BULK CARGO BERTHS (5A AND 6A) AT THE PORT OF MORMUGAO, GOA" on a Build, Own, Operate and Transfer basis;

WHEREAS, in response to the invitation to tender from the Licensor, ABG Heavy Industries Ltd. submitted a bid on 27/1/96;

WHEREAS, the Licensor, after evaluating all the bids received by it, has selected the proposal by ABG Heavy Industries Ltd. as acceptable and decided to award the Licence vide Letter of Intent dated 7<sup>th</sup> July, 1997 for award of Licence, enclosed as **Appendix I**;

WHEREAS, ABG Heavy Industries Ltd. has incorporated a new Special Purpose Vehicle (SPV) in the name and style of ABG Goa Port Pvt. Ltd. (the Licensee) and has requested the Licensor to enter into the Licence Agreement with ABG Goa Port Pvt. Ltd. (the Licensee);

WHEREAS, the Licensee company was duly incorporated under the Companies Act, 1956 vide Certificate of Incorporation dated 26<sup>th</sup> June 1997 enclosed as **Appendix II**;

WHEREAS, ABG Heavy Industries Ltd. have given an undertaking to the Licensor vide their letter dated 6<sup>th</sup> March, 1999 enclosed as **Appendix III** inter-alia for holding shares in ABG Goa Port Pvt. Ltd. (the Licensee);



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WHEREAS, in consideration of the said undertaking, the Licensor has granted such permission vide its letter dated 17/03/1999 enclosed as **Appendix IV**;

WHEREAS, the Licensee agrees to honour and be bound by all the commitments, obligations and responsibilities of ABG Heavy Industries Ltd. as contained in the bid document and all subsequent written communications between ABG Heavy Industries Ltd. and the Licensor and the Licensee shall be responsible for all acts of commissions and omissions on the part of ABG Heavy Industries Ltd. in relation to the acts done or omitted to be done in respect of the Project before the Date of Award of Licence.

WHEREAS, the Licensee has agreed to Build, Own, Operate and Transfer two Multipurpose Bulk Cargo berths with all backup facilities and equipment as per the provisions under this Agreement and the Licensor has agreed to grant Licence to the Licensee to do so on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions set forth herein, it is agreed by and between the Parties hereto as follows:

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# THE LICENCE

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## DEFINITIONS

Unless otherwise provided:

"**Agreement**" means this agreement as of date hereof, as amended, supplemented or otherwise from time to time in accordance with terms and conditions hereof.

"**Berth Charges**" means the charges for keeping the vessels alongside the wharves of the Terminal.

"**Board of Trustees**" means the Board of Trustees of the Maranguao Port, constituted under the Maranguao Port Act, 1963 or its successors.

"**Charges**" shall include Wharfage, Storage, Handling charges and other charges other than Berth Hire Charges that the Licensee may incur as the users of the Terminal. This will also include storage charges for cargo.

"**Chairman**" means the Chairman of the Board of Trustees of the Maranguao Port.

"**Change of Law**" means the occurrence of any of the following after the date of the Agreement:

(a) Enactment of any new law;

(b) Amendment, alteration, modification and repeal of any Law existing at the date of the Agreement;

(c) Award of License;

(d) Change in the interpretation or application of any Law by a competent judicial or legislative authority;

(e) Any such has not been made elsewhere in this Agreement, not being direct or indirect tax under the existing Law.

"**Chief Engineer**" means the Chief Engineer of the Maranguao Port Trust.

"**Date of License**" means the date of signing of this Agreement by both the Board of Trustees and the Licensee.

"**Operation**" means the date at the end of 30 months from the date of handing over of the Licensed Premises.

"**Handing Over of the Licensed Premises**" means the date on which the documents mentioned in Appendix A is handed over to the Licensee for the development of the Terminal which is the case shall not be later than 30 months from the Date of Award of License.

"**Standard Time**" means twenty four (24) hour period beginning and ending at 12:00 noon Standard Time.



### 1.1 Defined Terms

In this Agreement, unless otherwise provided:

"Agreement" means this agreement as of date hereof, as amended, supplemented or modified from time to time in accordance with terms and conditions hereof.

"Berth Hire Charges" means the charges for keeping the vessels alongside the berths of the Terminal.

"Board" means the Board of Trustees of the Mormugao Port, constituted under the Major Port Trusts Act, 1963 or its successors.

"Cargo Handling Charges" shall include Wharfage, Storage, Handling charges and any related charges other than Berth Hire Charges that the Licensee may collect from the users of the Terminal. This will also include storage charges beyond free period.

"Chairman" means the Chairman of the Board of Trustees of the Mormugao Port.

"Change in Law" means the occurrence of any of the following after the Date of Award of Licence:

- (i) enactment of any new Law;
- (ii) amendment, alteration, modification and repeal of any Law existing at the Date of Award of Licence;
- (iii) any change in the interpretation or application of any Law by a competent court, tribunal or legislature in India;

provision for which has not been made elsewhere in this Agreement, not being any change in direct or indirect tax under the existing Law.

"Chief Engineer" means the Chief Engineer of the Mormugao Port Trust.

"Date of Award of Licence" means the date of signing of this Agreement by both the Licensor and the Licensee.

"Date of Commercial Operation" means the date at the end of 30 months from the Date of Handing Over of the Licensed Premises.

"Date of Handing over of the Licensed Premises" means the date on which the complete site as mentioned in **Appendix V** is handed over to the Licensee for construction and development of the Terminal which in any case shall not be later than 2 months from the Date of Award of Licence.

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

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"Defaulting Party" means a Party which has committed a default of any of the terms and conditions of this Agreement.

"Deputy Chairman" means the Deputy Chairman of the Board of Trustees of the Mormugao Port.

"Design and Drawing" shall mean the preliminary and detailed drawings and backup technical information of a like nature required for the Project submitted by the Licensee from time to time.

"Expert" shall mean any person, body or organisation with recognised specialist technical or professional expertise in respect of any field relevant for the purpose of this Agreement, to be appointed by the Parties by mutual consultation. If the Parties are not able to mutually agree to the appointment of Expert, the matter shall be referred for decision to appropriate professional Indian Association (for example, where the Expert is a Chartered Accountant, the Institute of Chartered Accountants of India).

"Financing Documents" means the loan agreements and security arrangements entered into by the Licensee with the Lenders for the purposes of raising loans for the Terminal, as per the provisions of this Agreement but does not include documents or agreements relating to the commitment or contribution of equity.

"GoG" means the Government of the state of Goa.

"GoI" means the Government of India.

"Government Authority" means the GoI, GoG, or any state government or any other statutory body or corporation, any department, authority, instrumentality, agency, judicial body or tribunal of GoI, GoG, or any state government or any other statutory body or corporation having jurisdiction over the Licensee, the Licensed Premises, the Terminal or any portion thereof.

"Law" means any valid act, ordinance, rule, regulation, notification, directive, order, policy, by-law, administrative guideline, ruling or instruction having the force of law enacted or issued by a Government Authority.

"Lender" means any Indian or foreign institution, corporation, company or bank, providing loans to the Licensee in accordance with the normal and prudent business practices for the Project.

"Licence" means any or all of the authorisations under this Agreement as more particularly described in Article 2.1.

"Licence Fee" means periodic payment of stipulated amount in respect of land and water area handed over to the Licensee for the Project.

"Licence Period" shall mean the period of 30 years during which the Licensee shall construct and operate the Terminal before handing it over to the Licensor, as provided in the Article 2.2. The period shall commence from the Date of Handing over of the Licensed Premises by the Licensor to the Licensee.



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"Licensed Premises" means the premises in which the Licensee is authorised to build and operate the Terminal as shown in the **Appendix V**.

"Month" means the calendar month or part thereof as per the Gregorian calendar.

"Multipurpose Bulk Cargo berths" or the "berths" means two bulk cargo berths 5A and 6A situated on the Licensed Premises.

"Net Recoverable Value" means the surplus of the value of the salvage recovered by the Licensee less the cost of demolishing and disposing of the assets.

"Non-Defaulting Party" means the Party which has not committed a default of any of the terms and conditions of this Agreement.

"Permits" means any and all permissions, clearances, licenses, authorisations, consents, no-objections, approvals, of or from any Government Authority required for or in connection with the Project.

"Port" means the Mormugao Port to which the Major Port Trusts Act, 1963 applies within such limits as may, from time to time be defined by GoI for the purposes of the said Act by notification in the Official Gazette and until a notification is so issued, within such limits as may have been defined by GoI under the provisions of the Indian Ports Act, 1908.

"Project" means the development, designing, engineering, financing, constructing, equipping, insuring, completing, commissioning, owning, operating, maintaining, replacing or revamping/repairing of the Terminal by the Licensee, subject to the provisions of this Agreement, whether completed or at any stage of development and construction.

"Project Schedule" means the schedule set forth in Article 5.6.

"Rates of Cargo Handling Fixed by the TAMP" means the rates of Cargo Handling Charges as defined above, fixed or approved by Tariff Authority for Major Ports pursuant to the provisions of the Major Port Trusts Act, 1963 whether fixed or approved under same or separate heading(s) in one or more combination thereof.

"Royalty" means share of Cargo Handling Charges to be paid to the Licensor by the Licensee as per the terms of this Agreement.

"Scale of Rates" means the existing scale of rates of the Mormugao Port Trust as prevalent on the Date of Award of Licence and as revised from time to time.

"Terminal" means the Licensed Premises, the berths, stockyard, items of equipment, plant and any other facilities in the Licensed Premises.

"Year" means the period of twelve Months commencing from the Date of Handing over of the Licensed Premises and every twelve Month period thereafter, during the term of this Agreement.

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## 1.2 Other References

In this Agreement:

- "m" means Metre, the unit of length.
- "sq m" means Square Metre, the unit of area.
- "km" means Kilo Metre, the unit of length.
- "Kwh" means Kilowatt hour, the unit of electrical energy.
- "MT" means Metric Tonne, the unit of weight.

## 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 however there is any aspect related to this Project which is 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 document issued by the Licensor, as amended, and all correspondences between the Parties till the Date of Award of Licence.

This Agreement cannot be changed, modified or supplemented in any way except by an instrument in writing executed by the Parties.

Any amendment, addition or variation to this Agreement shall be valid and binding only if the same are mutually agreed upon by the Parties and executed in writing and signed by the Licensor and the Licensee.

If, for any reason whatsoever, any part or parts of this Agreement shall be declared void or invalid by any competent arbitral tribunal or court, or becomes voidable, that shall not effect the other parts which shall remain valid and enforceable.

Save as otherwise expressly provided, any reference in this Agreement to:

- (i) The words importing the singular shall mean the plural and vice-versa.
- (ii) "Article" and "Appendix" shall refer, respectively to Articles of and Appendices of this Agreement. The Appendices to this Agreement shall form part of this Agreement and will be in full force and effect as if the same were expressly set out in the body of this Agreement.
- (iii) A time or time of Day shall be construed as a reference to Indian Standard Time.
- (iv) The table of contents and any headings in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.
- (v) Interest to be calculated and payable to the Licensor under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement.
- (vi) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.



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## **2 THE LICENCE**

### **2.1 Grant of Licence**

In consideration of the Licensee agreeing to pay the Royalty, Licence Fee and other payments under this Agreement as set out in Article 7.3.4 and subject to the provisions of this Agreement, the Licensor grants to the Licensee an exclusive Licence for designing, engineering, financing, constructing, equipping, owning, operating, maintaining, replacing or revamping/repairing of the Terminal at the cost, charges and expenses of the Licensee within the Licensed Premises during the Licence Period as specified in Article 2.2.

The Licensee shall construct the berths and provide high rated handling equipment for handling of coal and other general and dry bulk cargo, consistent with the site conditions at Mormugao.

### **2.2 Licence Period**

The Licence granted herein will be for a period of 30 years (including the time taken for construction of the Terminal) from the Date of Handing over of the Licensed Premises.

On expiry of the Licence Period, the Licence shall not be automatically renewed for a further period and no compensation shall be payable by the Licensor to the Licensee for refusal to renew the Licence. The Licence may be renewed beyond 30 years by mutual agreement, subject to Government's sanction, for such period and on such terms and conditions mutually agreed upon by the Parties at the relevant and appropriate time.

This Licence will not bar the Licensee from participating in any subsequent bids invited by the Licensor for operation of the Terminal.

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## II CONSTRUCTION OF THE TERMINAL



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### **3 LICENSED PREMISES**

#### **3.1 Hand over of Licensed Premises**

The water area of about 60,500 sq m and the land area of about 40,200 sq m for construction of the Terminal as more particularly described in **Appendix V** shall be handed over by the Licensor within which area the Licensee shall confine its construction activities.

It is agreed that the entire land and water area shall be handed over by the Licensor within 2 months from the Date of Award of Licence subject to the Licensee making all the prescribed payments under Article 7.3.4.1.

#### **3.2 Information about Licensed Premises**

The land area and water area that shall be made available to the Licensee on "as is where is basis" are as shown in **Appendix V**. The land area is situated in the old dock behind berth nos. 4 (part), 5 & 6 and the Licensee will have to make its own arrangements for developing the same and should take such precautions as they consider necessary at its cost for constructional and other related activities.

The information about the Licensed Premises as set out in **Appendix VI** is provided by the Licensor in good faith. The Licensee hereby agrees to accept the Licensed Premises in its present condition and subject to all defects (including subsoil conditions) on an "as is where is basis".

The Licensor makes no representations and gives no warranty to the Licensee in respect of the condition of the Licensed Premises. The Licensee agrees and confirms that it shall independently satisfy itself about the details and the data furnished on meteorological, geological and other conditions as particularly described in **Appendix VI**.

If any defect, discrepancy, error or deficiency in the information supplied by the Licensor is noticed at any time during the Licence Period, no claim on this account will be entertained by the Licensor including claim for extension of time for completing construction of the Terminal, nor the Licensor shall in any way be responsible for any loss or damage, if any, caused to the Licensee as a result thereof.

#### **3.3 Datum**

The Datum to which all levels shall be referred for the purposes of the Project is the Chart Datum (0.00) which is 1.3 m below mean sea level.

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### 3.4 Use of Licensed Premises

The land and water area is given for construction and operation of the Terminal at the Port and the Licensee shall not, without the prior written consent or approval of the Licensor, use the Licensed Premises for any other purpose.

### 3.5 Improvements of the Licensed Premises

The Licensee shall take over the Licensed Premises, in its present condition and shall, at its cost, charges and expenses improve the same (including demolition of the existing structures / superstructures, if any, with the prior written approval of the Licensor and which approval shall not be unreasonably withheld) for efficient use as Terminal without any obligation whatsoever on the part of the Licensor. However, the Licensee may request the Licensor to take away the assets not demolished by the Licensee and Licensor shall take away such assets at the Licensor's cost within 6 Months from the date of such request.

The Licensee shall be entitled to make such development and improvements (on the Licensed Premises) as may be necessary or appropriate for carrying on the business of handling coal and other general and dry bulk cargo traffic provided that no such development and improvements on the Licensed Premises shall commence without the Licensee first submitting proper Design and Drawing thereof to the Licensor and obtaining prior written consent or approval of the Licensor.

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## **4 DESIGN AND DRAWING**

### **4.1 Preparation of Design and Drawings**

The Licensee agrees and undertakes at its cost, charges and expenses to prepare the Design and Drawing for the Terminal. The Licensee shall cause the preparation of Design and Drawing through established and professionally qualified personnel, either in-house, if available, or through outside agencies keeping in view the various parameters and standards as per **Appendix VII** and seek approval of such Design and Drawing by the Licensor.

### **4.2 Design and Drawing Requirements**

The Licensee agrees and undertakes to carry out the work of all construction / modifications / repairs and maintenance / dredging / installations or any other works required for setting up of the proposed facilities in the Licensed Premises only after submission of the detail plan and prior approval of the Licensor.

### **4.3 Review and Approval of Design and Drawing**

The Licensee shall submit the Design and Drawing prepared by it for the approval of the Licensor before commencing construction and development of the Terminal.

The Licensor shall review the Design and Drawing and specifications submitted by the Licensee within 30 Days from the date of the receipt of such Design and Drawing.

In the event of the Licensor objecting to the Design and Drawing and specifications or any part thereof it shall promptly seek clarifications or notify the Licensee its objections to the Design and Drawing or suggest changes or modifications or corrections thereto.

The Licensee shall thereafter promptly provide necessary clarification to the Licensor. The Licensor shall, after considering the clarification, grant its approval or reject any Design and Drawing and specifications or part thereof.

In case the changes and/or modifications and/or corrections suggested by the Licensor are acceptable to the Licensee, the Licensee shall resubmit fresh Design and Drawing incorporating such changes and/or modifications and/or corrections.

The Licensee shall not be entitled to any compensation whatsoever including extension of time for completing construction on account of delay caused or



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expense incurred by the Licensee for providing such clarification or in resubmitting the design and drawing.

If the Licenser does not object to detailed specifications, calculations and Design and Drawing submitted to it by the Licensee within 30 Days of submission, the Licenser shall be deemed to have approved those detailed specifications, calculations and Design and Drawing.

The Licensee shall under no circumstances change any detailed Design and Drawing and specifications approved by the Licenser, without prior written consent of the Licenser.

#### **4.4 Responsibility of the Licensee**

Notwithstanding the consent or approval by the Licenser the Licensee shall be solely responsible for any defect and/or deficiency in the Design and Drawing or any part thereof and notwithstanding such consent or approval the Licensee shall at all times remain responsible for its obligations under this Agreement. The failure on the part of the Licenser to object to the specifications, Design and Drawing shall not be construed as a waiver by the Licenser of any of its rights under this Agreement nor it shall in any way relieve and/or absolve the Licensee of its obligations and/or liabilities under this Agreement. In furtherance of the foregoing, the Licensee specifically agrees, declares and confirms that:

- (a) any civil and/or mechanical engineering review conducted by the Licenser is solely for the Licenser's own information and that by conducting such review, the Licenser does not accept any responsibility for the quality of or workmanship of any civil and/or mechanical engineering or soundness of construction of the Terminal or any part thereof;
- (b) the Licensee shall in no way represent to any third party that, as a result of any review by the Licenser, the Licenser shall be deemed to have accepted responsibility for the engineering or soundness of construction of the Terminal or any part thereof;
- (c) the Licensee shall, subject to the other provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Terminal and any part thereof.

### 5.1 Principal Obligations of Licensee

The Licensee agrees and undertakes at its cost, charges and expenses to :

- a) commence and complete construction and development of the Terminal within 30 Months from Date of Handing over of the Licensed Premises and broadly as per the schedule set out in **Appendix VIII**;
- b) complete the capital dredging alongside the berths including approach to the berths as per the provisions of Article 5.3, dump the dredged material, clear the water area and salvage any debris or structures or any other obstructions both under and over water. The Licensee may utilise, if required, the dredged material if found suitable for reclamation of the Licensed Premises;
- c) ensure, if any foreigner is employed by the Licensee to work within the Licensed Premises, that such a foreigner possesses the necessary special permit issued by the concerned authorities, in writing, and also comply with the instructions issued by such authorities from time to time. In the event of any lapse in this regards on the part of such foreigner, the Licensee shall be held responsible for the lapse and the Licensor shall not be liable in any event;
- d) undertake, at its own cost, charges and expenses, the work such as realignment of roads, electric poles, lighting towers, buildings or any other structures which may be required in connection with the Project;
- e) ensure, while carrying out the work of electrical nature, adherence to the provisions of the Indian Electricity Act, 1910 and Indian Electricity Rules, 1956, as amended from time to time;
- f) pay to the Licensor, the Net Recoverable Value of the demolished assets in case any shed/buildings or any other structure, existing in the Licensed Premises at the time of handing over, are demolished by the Licensee, in addition to any other payments under this Agreement. The Licensee may request the Licensor to take away the assets not demolished by the Licensee and Licensor shall take away such assets at the Licensor's cost within 6 Months from the date of such request;
- g) entrust responsibility for project management and construction to professionally competent personnel, either in-house, if available, or outside agencies;
- h) make available all necessary resources including capital investment for construction and development of the Terminal;
- i) allow the Licensor to inspect the construction and development of the Terminal;
- j) provide fencing and other facilities, if required by the Licensor/Customs and other statutory authorities, for the area earmarked;
- k) conform to and comply with the requirements of labour and other statutes, Acts, regulations and bye-laws of the State or Central Government and/or of the Licensor and/or of all other local authorities as may be applicable to the Licensee during the construction. The Licensor shall not be held liable in any event for the failure of the Licensee to conform to or comply with the labour

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and other statutes, Acts, Regulations and Bye-laws of the State or of the Union Government or of the Licensor and of all other local authorities;

- l) comply with all regulations imposed by the Customs and Port Security authorities in respect of the passage of vehicles, materials and personnel through Customs and Port barriers; and
- m) abide by the additional instructions issued by the Licensor, if necessary, due to changes in the existing rules and regulations, from time to time, which are not stipulated in the Agreement.

## **5.2 Right to sub-contract**

The Licensee may sub-contract the construction of civil works and/or procurement of mechanical or electrical equipment, provided the Licensee shall be solely responsible for any defect and/or deficiency therein or any part thereof and notwithstanding any sub-contracting, the Licensee shall at all times remain responsible for its obligations under this Agreement.

## **5.3 Capital Dredging**

The capital dredging alongside the berths and approach to the berths as per the limits set out in **Appendix V**, dumping of the dredged material, clearing the water area and salvaging of any debris or structures or any other obstructions both under and over water shall be carried out by the Licensee at its cost. The Licensee may utilise the dredged material, if required, and if the dredged material is found suitable, for reclamation of the Licensed Premises. The minimum possible depth to be dredged is -13.00 metres for the basin area and -13.50 metres alongside the berths. The decision of the Licensor's Chief Engineer or its authorised representative shall be final in all matters connected with the dredging. The dredged material, if not used by the Licensee for reclamation of the Licensed Premises, shall be dumped at a distance of about 10 kms away from the break-water at a location approved by the Chief Engineer or its authorised representative. During the dredging operations, if the Licensee gets any valuable material, antiques and materials of value, the same shall be handed over to the Licensor at no compensation in lieu of the same.

## **5.4 Safety Requirements**

The Licensee shall give priority to safety in its construction and planning activities in order to protect life, health, property and environment.

## **5.5 Equipment and Materials**

The Licensee is free to plan all constructional activities and back-up facilities connected with the proposed Terminal within the Licensed Premises. The Licensee shall provide or cause to be provided at its own cost, all necessary equipment, raw materials and other items that may be required for construction of either temporary or permanent nature.



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## 5.6 Project Schedule

The Licensee agrees and undertakes to perform its obligations under this Agreement broadly in accordance with the Project Schedule set out in **Appendix VIII**. The time schedule for date of completion of the project shall be reckoned from the Date of Handing over of the Licensed Premises.

## 5.7 Financial Obligations of the Licensee

The Licensee shall construct the Terminal entirely at its own costs, charges and expenses. Any increase in the cost of the Project, due to any reason whatsoever, including cost overrun and/or loss due to delayed construction, shall remain the responsibility of the Licensee. No extension of time for construction and commissioning of the Terminal under this Agreement will be entertained by the Licensor on this account except subject to Force Majeure provisions under Article 12 of this Agreement and/or if such delay is attributable to the Licensor's default.

## 5.8 Inspection

The Licensee shall at all times during the construction phase permit the Chief Engineer or any person authorised by the Licensor to enter upon and inspect the Licensed Premises and/or the construction work to enable the Licensor to inter-alia ascertain whether the Licensee is complying with the terms and conditions of this Agreement and/or whether or not the Licensee is complying with its other contractual obligations and/or statutory obligations under any law for the time being in force.

The Licensee agrees to give to such authorised personnel of the Licensor access to the Licensed Premises and co-operation to allow the Licensor and/or authorised personnel of the Licensor to inspect the construction of the Terminal.

## 5.9 No Release

The Licensee agrees, declares and confirms that failure on the part of the Licensor to inspect any work

- (a) shall not amount to consent or approval by the Licensor nor the same shall be deemed to be waiver of any of the rights of the Licensor under this Agreement; and
- (b) the same shall not release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.

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The Licensor agrees that it shall not unreasonably delay or withhold any inspection requested by the Licensee for obtaining any approval and/or consent of the Licensor required to be obtained under any provision of this Agreement.

#### 5.10 Obligations of the Licensor

The Licensor undertakes to comply with the following obligations:

- (i) provision and maintenance of all general port infrastructure;
- (ii) pilotage and towage on a non-discriminatory basis subject to the Port's operational norms on payment of charges by the users as per Licensor's Scale of Rates prevailing from time to time; such pilotage is compulsory for the Licensee.
- (iii) co-ordinating and overseeing the dock side safety and implementation by the Licensee of all orders and directions of the regulatory authorities viz., the Dock Safety Inspector, Government Authority;
- (iv) monitoring pollution in the air and water at the Licensor's cost and ensure compliance of environmental protection measures in the Licensed Premises at the cost of the Licensee. This shall however not absolve the Licensee of its obligations towards environmental protection.
- (v) supply power and water for construction as per the provisions under Article 5.11;
- (vi) provision of assistance to the Licensee for fire fighting from the water side.
- (vii) waterside safety and safety of navigation which remain vested with the Deputy Conservator of the Licensor; and
- (viii) obtaining/ assist in obtaining customs notification and other sanctions or permissions for the Licensed Premises to be utilised as the Terminal, as necessary.

#### 5.11 Supply of Power and Water during Construction

The Licensor shall provide water supply and electric power supply during construction stages, subject to Force Majeure, upon terms and conditions including payment by the Licensee, at rates prescribed by the Licensor from time to time. Water and power supply will be made available from near Gate No.1 and substation A at Mechanical Ore Handling Plant of the Licensor respectively from where the Licensee will have to make its own arrangements for drawing the same. Small amount of power, if required, may be made available from the substation near Berth no. 4.

The Licensee shall be liable for, and shall pay to the Licensor, during the construction period, all charges for the power supplied to the Licensed Premises and/or the Terminal. The Licensee shall, at its cost, but to the satisfaction of the Licensor, install meters to measure the consumption of power. In the event of disruption of power supply or break down in supply of power for any reasons whatsoever or for a planned maintenance shut down, except in case of Force Majeure, no adjustment in the Project Schedule as per **Appendix VIII** shall be made by the Licensor for any loss or damages caused to or suffered by the Licensee as a result thereof. In case of disruptions in power supply wherein each

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such disruption lasts for more than one hour and the total of such disruptions amounts to six hours or more in a day, then it shall constitute Force Majeure. The Licensee shall, at its cost, be entitled to make alternate arrangement for power subject to prior written approval of the Licensor and subject to Licensee obtaining necessary permissions from the concerned authorities.

The Licensee shall be liable for, and shall pay to the Licensor all charges for the water made available to the Terminal. The Licensee shall, at its cost but to the satisfaction of the Licensor, install meters to measure the consumption of water.



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# **III OPERATION AND** **MAINTENANCE**

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## **6 OPERATION AND MAINTENANCE**

### **6.1 Obligations of the Licensee**

#### **6.1.1 *Principal Obligations of the Licensee***

The Licensee agrees and undertakes, during the Licence Period, to own, manage, operate, maintain, replace or repair/revamp the Terminal, entirely at its cost, charges, expenses and risk. The Licensee also agrees and undertakes to:

- (a) confine its operations within the Licensed Premises;
- (b) make payments to the Licensor as per provisions of Article 7.3.4;
- (c) not to refuse coal/coke cargo till the Licensor is entitled to set up new facilities as per the provisions under the Article 9.5;
- (d) take charge of the goods discharged from vessels and give receipts, if necessary, for the same under the provisions of the Major Port Trusts Act, 1963;
- (e) have the scale of rates for all operations, within the Terminal, approved by the Tariff Authority for Major Ports;
- (f) give delivery of the goods and, subject to the provisions of this Agreement, receive or recover from consignees or owners or vessel agents charges due and payable by them;
- (g) subject to the provisions of this Agreement, generally perform and undertake, within the Licensed Premises, all services which the Licensor is required to perform and undertake under the provisions of Section 42 of the Major Port Trusts Act, 1963;
- (h) achieve, at the minimum, the annual throughput as per Article 7.3.3, during the Licence Period;
- (i) carry out maintenance as per normal engineering practice;
- (j) conform to and comply with the dock side safety and implement all relevant orders and directions of the Licensor and regulatory authorities viz., the Dock Safety Inspector, or any Government Authority or authorities appointed under any law from time to time. The Licensor shall not be liable in any event for the failure of the Licensee to conform to any of the above Acts and Regulations, Bye-laws of any Government Authority in this matter;
- (k) conform to and comply with the regulations and bye-laws of any Government Authority, as applicable;
- (l) abide by the additional instructions issued by the Licensor, if any, in terms of existing rules and regulations, from time to time, which are not stipulated in the Agreement;
- (m) comply with the requirements of labour and other statutes, bye laws, rules and regulations as may be applicable from time to time; and
- (n) ensure that any foreigner employed by the Licensee to work within the Licensed Premises possesses the necessary special permit issued by the concerned authorities, in writing, and also comply with the instructions issued thereof from time to time. In the event of any lapse in this regards on

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the part of such foreigner, the Licensee shall be held responsible for the lapse and the Licensor shall not be liable in any event.

#### **6.1.2      *Right to sub-contract and sub-license***

The Licensee shall not, without prior written approval of the Licensor, which shall not be unreasonably withheld, give on sub-Licence or create any third party right, title or interest of any nature whatsoever for carrying out any of its obligations of either operation or maintenance of any of the facilities or any part of the Terminal.

The Licensor may, for efficient use of the Terminal, grant approval to the Licensee to sub-contract certain operational function/facilities and/or maintenance of the Terminal or any part thereof. However grant of such approval shall not absolve the Licensee of any of its obligations and/or liabilities under this Agreement and notwithstanding such approval the Licensee shall at all times remain responsible for its obligations under this Agreement.

#### **6.1.3      *Use of Licensed Premises***

The Licensee agrees and undertakes not to use the Licensed Premises for any purpose other than the designated purposes, specified in the Licence, without obtaining prior written consent from the Licensor.

#### **6.1.4      *Common-User, Non-Discriminatory Licence***

Subject to the provisions of Article 6.1.5, the Licensee shall manage and operate the Terminal on a common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and consignors, and refrain from indulging in any unfair or discriminatory practice against any user of the Terminal or persons desiring to avail themselves of the services offered by the Terminal.

#### **6.1.5      *Preferential and Priority Berthing***

The Licensee shall have the right, subject to the provisions of Article 6.1.4 and Article 15.5 of this Agreement and with the prior written approval of the Licensor, to enter into agreements for priority berthing schemes in the matter of berthing of ships of any one or more shipping lines or vessel owners/operators with a view to optimising the use of the berths and equipment in view of Minimum Guaranteed Throughput.



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#### **6.1.6      *Right to Allow the Use of Ship's Gears***

The Licensee shall have the right to allow the use of ship's gears as and when felt necessary.

#### **6.1.7      *Handling Vessels Under the Licensor's Directions***

The Licensor reserves its rights to direct the Licensee to handle any vessels at the Terminal when the Licensee's berth is not occupied. The Licensee shall be entitled to collect all Cargo Handling Charges as per the applicable tariff provided however that Royalty on such charges will be paid to the Licensor. Cargo from such vessels handled shall be reckoned in determining the throughput attained by the Licensee.

#### **6.1.8      *Power and Water Supply***

The Licensee shall make its own arrangements for water supply and electric power requirements for the operation of the facility. The Licensor will provide necessary assistance in the form of recommendatory letters etc. to the Licensee in this regard. Lighting in the area licensed to the Licensee shall be arranged by the Licensee at its cost. Such lighting shall, however, not hinder with Licensor's navigational requirements.

#### **6.1.9      *Unclaimed goods***

The disposal of unclaimed/ uncleared goods, apportionment of the sale proceeds and recovery of deficit, if any, shall be carried out by the Licensee as per the provisions of the Customs Act, 1948 or Major Port Trusts Act, 1963, as applicable.

#### **6.1.10     *Loss, Destruction or Deterioration of Goods***

The responsibility of the Licensee for the loss, destruction or deterioration of goods of which it has taken charge shall, subject to the provisions of the Major Port Trusts Act, 1963, be that of a bailee under Articles 151, 152 and 161 of The Indian Contract Act, 1872 (9 of 1872).

#### **6.1.11     *Maintenance of Facilities***

The Licensee shall be solely responsible for keeping at all times the Terminal in good working condition, normal wear and tear excepted, from the Date of Handing over of the Licensed Premises, till the expiry of the Licence Period or Termination, as the case may be.

From the 25<sup>th</sup> Year onwards, if the Licensee feels that demolition/ disposal of the assets referred to in **Appendix IX** is necessary for providing optimal and efficient

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service, it shall seek written approval from the Licensor. The Licensor may, after due examination of the request, grant such permission in writing without which the Licensee shall not engage in such demolition/ disposal. Upto the time before the commencement of 25<sup>th</sup> Year, the Licensee shall have the full freedom regarding such demolition / disposal. However, it shall inform the Licensor at least thirty (30) Days prior to such demolition / disposal about such plans. Also, in case of either Party serving a Notice of Intent to Terminate on the other Party pursuant to Article 13 under this Agreement, any such demolition / disposal subsequent to the Notice of Intent to Terminate shall be subject to the prior written approval of the Licensor.

#### **6.1.12 Access for Inspection**

The Licensee shall at all times during the operation phase permit authorised personnel of the Licensor to enter upon and inspect the Terminal to enable the Licensor to inter-alia ascertain whether the Licensee is complying with the terms and conditions of the Licence and/or this Agreement and/or whether or not the Licensee is complying with its other contractual obligations and/or statutory obligations under any law for the time being in force.

The Licensee agrees to give to the authorised personnel of the Licensor access to the Licensed Premises and co-operation to allow the Licensor to inspect the operation and maintenance of the Terminal or any part thereof.

#### **6.1.13 Reporting requirements**

The Licensee shall from time to time at its cost, charges and expenses submit to the Licensor statistical reports and information on cargo throughput and daily output rates at berth. Specifically, the Licensee shall submit to the Licensor within fifteen Days following the end of each Month, a report stating the total quantity and types of cargo handled in MTs.

#### **6.1.14 Corporate Staffing**

The key personnel of the Licensee, to be deployed for the operations and maintenance management functions of the Terminal, shall be changed with intimation to the Licensor, except in the cases of resignation and removal from employment, in which case post intimation shall be given to the Licensor.

#### **6.1.15 Personnel of the Licensee**

It shall be the sole responsibility and liability of the Licensee to pay the salary and other amounts payable to its employees employed by it. Under no circumstances, any of the personnel/ employees of the Licensee shall be deemed to be the personnel/ employees of the Licensor.

The Licensee shall be free to fix its own work practices (including manning pattern for operating the equipment, wage structure for employees, working

hours and shift systems, and other welfare measures for the employees such as incentive schemes, etc.) which may be different from those of the Licensor, provided however the Licensee shall adhere to applicable labour law(s) and shall comply with the same. The Licensee shall be free to determine all service conditions for its employees including Employees Welfare Schemes, etc.

#### **6.1.16 Responsibility of the Licensee's Employees upon Expiry of Licence Period**

On expiry of Licence Period or early Termination, as the case may be, all the employees of the Licensee shall remain Licensee's liability, in all respects, including payment of retrenchment compensation, if any, payable to them under the law for the time being in force. The Licensor shall in no way be responsible for their employment. The Licensee agrees to indemnify the Licensor against any claim made by the Licensee's employees against the Licensor in respect of or as a consequence of the termination of their services by the Licensee.

### **6.2 Obligations of the Licensor**

#### **6.2.1 Services to be Provided**

The Licensor agrees and undertakes to provide the following services at its cost, charges and expenses:

- (i) scheduling entry, berthing and sailing of the vessels as required by the Licensee round the clock, throughout the year as per the Port's operational norms;
- (ii) pilotage and towage on a non-discriminatory basis round the clock, throughout the year as per the Port's operational norms on payment of charges by the users as per Licensor's Scale of Rates prevailing from time to time. Pilotage is compulsory for all vessels;
- (iii) maintenance dredging alongside the berths and the approaches thereto as per **Appendix V** for adequate draft;
- (iv) provision and maintenance of all necessary port infrastructure;
- (v) provision of waterside safety and safety of navigation;
- (vi) co-ordinating and overseeing the dock side safety and implementation by the Licensee of all orders and directions of the regulatory authorities viz., the Dock Safety Inspector, Government Authority;
- (vii) monitoring pollution in the air and water at the Licensor's cost;
- (viii) ensure compliance of environmental protection measures in the Licensed Premises at the cost of the Licensee ; however, this shall not absolve the Licensee of its responsibilities for environmental protection;
- (ix) obtaining customs notification for the Licensed Premises to be utilised as Terminal;
- (x) removal of wrecks, debris and liquid spillage out of the entrance channel approaches and alongside berths of the Terminal;
- (xi) provide assistance for fire fighting from the water side; and
- (xii) provide marshalling yard and make arrangements for bringing in the rakes, in parts, for loading/unloading and taking out the same after being loaded/unloaded by the Licensee. Haulages and other charges, as



applicable outside the Licensed Premises from time to time, will be collected from the consignors/consignees directly by the Licensor.

#### **OWNERSHIP AND TARIFF**

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

###### **Land and Water Area**

The ownership of the Licensed Premises including all land reclaimed area and other areas shall remain with the Licensor and shall rest and/or be decided to remain with the Licensor at all times.

###### **Assets created or provided by the Licensee**

The ownership of all buildings, structures, berths, wharves, cargo handling equipment, other movable assets and other chattels situated on or about the Licensed Premises or relating to or connected with the Terminal created or provided by the Licensee, shall, subject to the provisions of this Agreement, remain with the Licensee during the License Period.

##### **Obligations of the Licensee**

The Licensee may hypothecate and/or create charge on and/or create other security interest on and/or mortgage the assets created or provided by the Licensee referred to in Article 7.1.2 for the limited purpose of offering such assets as collateral in favour of the Lenders for securing payments of interest and principal of any loan advanced by such Lenders. It is agreed between the Parties that such hypothecation and/or charge and/or other security interest and/or mortgage shall be subject to the priority charge of the Licensor in favour of the Lenders for recovering any amounts in respect of loans and interest to the extent not recovered by the Security Deposit as standing to the Licensor under the provisions of this Agreement as at Date of Termination. Such charge shall be valid only during the License Period or Termination as the case may be, whichever is earlier. Any hypothecation and/or charge and/or other security interest and/or mortgage created by Licensee beyond the License Period shall be null and void and shall not be binding on the Licensor.

The Licensor shall collect Port dues, pilotage and other charges and any other miscellaneous charges except Berth Hire Charges as per the Port's Scale of Rates from time to time directly from the Ship's agents. The Licensee shall collect the Berth Hire Charges and all Cargo Handling Charges.

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## **7 OWNERSHIP AND TARIFF**

### **7.1 Ownership of Assets**

#### **7.1.1 Land and Water Area**

The ownership of the Licensed Premises including all land, reclaimed area and water area shall remain with the Licensor and shall vest and/or be deemed to vest with the Licensor at all times.

#### **7.1.2 Assets created or provided by the Licensee**

The ownership of all buildings, structures, berths, wharves, cargo handling equipment, other movable assets and other chattels situated on or about the Licensed Premises or relating to or connected with the Terminal, created or provided by the Licensee, shall, subject to the provisions of this Agreement, remain with the Licensee during the Licence Period.

### **7.2 Entitlements of the Licensee**

The Licensee may hypothecate and/or create charge on and/or create other encumbrances on and/or mortgage the assets created or provided by the Licensee referred to in Article 7.1.2 for the limited purpose of offering such assets as collateral in favour of the Lenders for securing payments of interest /repayments of principal of any loan advanced by such Lenders. It is agreed between the Parties that first hypothecation and/or charge and/or other encumbrances and/or mortgage shall be subject to the *pari passu* charge of the Licensor with the Lenders for recovering any amounts in respect of Royalty and Licence Fee (to the extent not covered by the Security Deposit) outstanding to the Licensor under the provisions of this Agreement as on Date of Termination Notice and shall be valid only during the Licence Period or Termination as the case may be, whichever is early. Any hypothecation and/or charge and/or other encumbrances and/or mortgage created by Licensee beyond the Licence Period shall be null and void and shall not be binding on the Licensor.

### **7.3 Tariff**

The Licensor shall collect Port dues, pilotage, anchorage charges and any other vessel related charges except Berth Hire Charges as per the Port's Scale of Rates effective from time to time directly from the Ship's agents. The Licensee shall collect the Berth Hire Charges and all Cargo Handling Charges.

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### **7.3.1      *Setting Prices***

The Licensee is free to fix the rates for cargo handling facilities for all permitted cargoes at the Terminal subject to the approval by the Tariff Authority for Major Ports. For the purpose of fixing or revising existing Tariff, the GoI has set up an independent Tariff Authority for Major Ports constituted under Section 47A of the Major Port Trusts Act, 1963.

The Licensee shall be free to give discounts in tariff and any other charges. However, such discounts shall be given by the Licensee only in respect to the charges due and payable by the consignees/owners or vessel owners/agents to the Licensee and not in respect of the charges payable by such persons directly to the Licensor.

The Licensee is free to propose separate charges for storage beyond a specified free period to discourage the users of the Terminal to use the Terminal as a long term storage area. The Licensee may approach the Tariff Authority for Major Ports separately for fixing the storage charges beyond free period, if required. However, the Licensee is bound to pay the agreed Royalty to the Licensor on the storage charges beyond the free period as well.

### **7.3.2      *Regulation and Review***

The Licensee may at any time, apply for revision of tariff to be charged and recovered by it to the Tariff Authority for Major Ports constituted under Section 47A of the Major Port Trusts Act, 1963. However, the Parties shall be bound by any statutory amendments to the existing procedure for fixing the charges.

### **7.3.3      *Throughput requirements***

The Licensee shall guarantee a minimum volume of throughput of 5 million (5,000,000) metric tonnes per annum at the Terminal (Minimum Guaranteed Throughput). The time frame for achieving the Minimum Guaranteed Throughput shall be 66 (Sixty Six) Months from the Date of Handing over of the Licensed Premises. In case the Licensee fails to achieve the Minimum Guaranteed Throughput at anytime after the said period of 66 Months, the Licensee shall nonetheless be liable to pay the Royalty on the basis of the Minimum Guaranteed Throughput as per the provisions under Article 7.3.4.3 of this Agreement. In case the Licensee improves upon the Minimum Guaranteed Throughput even during this period of 66 Months, the Licensee shall be liable to pay the Royalty on the actual throughput as per the provisions under Article 7.3.4.3 of this Agreement.

For purposes of this Agreement, the annual throughput would represent the total of import/export and transshipment cargo converted into MTs handled at the Terminal. A transshipment cargo when handled twice across the apron shall automatically be counted twice for the purpose of counting the number of MTs. For container cargo, 1 TEU shall be taken as equivalent to 12 MT.



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In case of genuine reasons, like Force Majeure conditions or change in the GoI policy regarding import / export of a particular commodity as a result of which the required throughput could not be achieved in a Year, suitable relaxation may be made by the Licensor with the approval of the GoI.

#### **7.3.4 Payment and Payment Terms**

##### **7.3.4.1 Initial Payment**

The Licensee shall pay to the Licensor the following amounts:

- a) Annual Licence Fee payable in advance for the first Year of the Licence Period, amounting to Rs. 1,52,25,840/- (Rupees one crore fifty two lakhs twenty five thousand eight hundred and forty only), within 30 Days from the Date of Award of Licence.
- b) Premium equivalent to one year's Licence Fee, amounting to Rs. 1,52,25,840/- (Rupees one crore fifty two lakhs twenty five thousand eight hundred and forty only), on or before the Date of Award of Licence.
- c) Security Deposit as per the provisions of Article 10.12 on or before the Date of Award of Licence.

The Licence granted by this Agreement shall be deemed to be cancelled if the Licensee fails to make the payments as per (b) and (c) above within the time limits prescribed therein or fails to make the payment as per (a) above within 60 days from Date of Award of Licence.

##### **7.3.4.2 Annual Licence Fee**

From the second Year of the Licence Period onwards, the Licence Fee provided under this Agreement shall be subject to an upward revision at the end of every Year by 5% of the Licence Fee paid for the preceding Year.

The Licence Fee shall be payable in advance on an annual basis. The Licence Fee for the first Year shall be paid within 30 days of Date of Award of Licence, but will be accounted only from the Date of Handing over of the Licensed Premises by the Licensor. The Licence Fee from the second Year onwards shall be paid in advance one month before the commencement of the Year for which the Licence Fee is due failing which the Licensor will be entitled to terminate this Agreement.

The total Licence Fee payable by the Licensee for the first Year is Rs.1,52,25,840/- (Rupees one crore fifty two lakhs twenty five thousand eight hundred forty only).

The Licensor shall have the option to refix the Licence Fee every 10 years based on the then prevailing Scale of Rates.

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**7.3.4.3****Monthly Royalty Payment**

In addition to the annual Licence Fee, the Licensee shall pay to the Licensor the following Royalty:

From the day the Licensee first provides cargo handling services to users of the Terminal (which may be before the Date of Commercial Operation) or from the Date of Commercial Operation, whichever is earlier, till 36 Months from the Date of Commercial Operation, the Licensee shall pay to the Licensor 18% of the Cargo Handling Charges, irrespective of discounts, if any, granted by the Licensee, collected by the Licensee from the users of the Terminal. The remittance will be made on the 5<sup>th</sup> of every month or the next working day in case the above date falls on a holiday, for the previous month's throughput.

From the 37<sup>th</sup> Month from the Date of Commercial Operation onwards, the Royalty payable shall be the highest of the following:

- (A) 18% of the Cargo Handling Charges, irrespective of discounts, if any granted by the Licensee, collected by the Licensee from the users of the Terminal for the actual throughput.
- (B) 18% of the Cargo Handling Charges for the Minimum Guaranteed Throughput as described under Article 7.3.3 of this Agreement.
- (C) The minimum annual income determined on the basis of 18% of the total income at the Rates of Cargo Handling Fixed by the TAMP, for a Minimum Guaranteed Throughput of 5 million metric tonnes per annum as described under Article 7.3.3 of this Agreement.
- (D) The Annual income of Rs. 12,00,20,560 (Rupees twelve crore twenty thousand five hundred sixty only).

From the 37<sup>th</sup> Month from the Date of Commercial Operation onwards, Monthly Royalty shall be paid on the 5<sup>th</sup> of every month, or the next working day in case the above date falls on a holiday, for the previous Month's throughput. At the end of each Year, the total Royalty payable shall be computed and the difference, if any, between the amount of Royalty actually payable (the highest of (A), (B), (C) and (D) above) and the Royalty actually paid by the Licensee shall be paid by the Licensee to the Licensor within 60 (sixty) Days.

If for any reason the Licensee is unable to achieve the Minimum Guaranteed Throughput as indicated in Article 7.3.3 in any Year, the Licensee shall nonetheless be liable to pay the Royalty as per the provisions under Article 7.3.4.3 unless failure is attributed to factors outside the Licensee's control as specifically set out in Articles 7.3.3 and 12.1.

**7.3.4.4****Failure to Pay**

The Licensor shall levy interest at the rate of 15 % per annum to the Licensee on every delayed payment of Licence Fee, royalties, fees or any other dues/payment to be made by the Licensee to the Licensor provided such delayed payment shall not be allowed by the Licensor for a period exceeding six months. The interest shall be charged from the date on which such amount becomes payable to the Licensor under this Agreement.

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### **7.3.5 Other Payments**

#### **7.3.5.1 Power and Water charges**

The Licensee shall, in addition to the amount of Licence Fee and Royalty payable by it to the Licensor under this Agreement, pay all bills for power and water consumed by it under the terms of the Article 5.11 within 30 Days of receipt of the bills by the Licensee.

#### **7.3.5.2 Others**

The Licensee shall pay, in addition to the aforesaid charges:

- (a) To the Licensor, all the charges such as telephone, sewerage connections, and damages, if any, caused by the Licensee to the Port's equipment outside the Licensed Premises, and any other charges that may be levied from time to time as applicable as per the Port's Scale of Rates.
- (b) To the Licensor, fee for any boats, launches or other floating crafts used by the Licensee as per the Port's Scale of Rates. In addition, usage of any of the Licensor's berths by the Licensee's boats/launches/ barges and other floating crafts shall attract berth hire charges as per the Port's Scale of Rates.
- (c) the taxes and duties, claimed or demanded by any Government Authority, if any, for the roads, paved area, railway siding and such other like assets, built by the Licensee under the provisions of this Agreement within the Licensed Premises.



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## IV TRANSFER OF THE TERMINAL

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## 8 TRANSFER AFTER THE LICENCE PERIOD

### 8.1 General Scope of Transfer

On the expiry of Licence Period, the Licensee shall

- (a) hand over to the Licensor vacant and peaceful possession of the Licensed Premises including any improvements made by the Licensee;
- (b) transfer and hand over to the Licensor all the permanent civil structures, equipment, machinery, ancillaries, other movable assets belonging to the Licensee and/or used by it in the Terminal, to the extent that they are owned by the Licensee. However, the items of equipment as listed in **Appendix IX** may either be owned or taken on lease by the Licensee from the date of installation till the expiry of the Licence Period or termination, subject to Article 6.1.11 and handed over to the Licensor on expiry of the Licence Period. The ownership of such items of equipment which are leased shall be immediately transferred to the Licensor, free from all encumbrances at the time of termination or expiry. The Licensor shall have the right to approve such lease agreements;
- (c) transfer all its rights, titles and interests, if any, in and to the Terminal to the Licensor free of all encumbrances. However, the Licensee can collect all dues owing to it directly from the users and to facilitate such collection, the Licensor shall render all possible assistance;
- (d) hand over to the Licensor all technical manuals and necessary records which will allow the Licensor to operate the Terminal.

### 8.2 Final Survey

Before the expiry of Licence Period, the Licensor may conduct or cause to be conducted at its cost, charges and expenses, a condition survey of the entire Terminal to ascertain whether the various facilities provided by the Licensee in the Terminal are in working condition, normal wear and tear and depreciation excepted and/or whether or not the Licensee has complied with the provisions of this Agreement.

### 8.3 Transfer of Insurance and Contractor Warranties

The Licensee hereby agrees to assign simultaneously at the time of transfer of Terminal, in favour of the Licensor, all its rights and interests in all unexpired guarantees and warranties, if any, given to it by sub-contractors and suppliers without claiming any compensation whatsoever from the Licensor. However, if the Licensee has made any claim on account of any event occurring during the Licence Period under such guarantee or warranty, then in that event the

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Licensee shall alone be entitled to pursue and recover such claim. Further, if for any reason, the Licensor receives or recovers any amount or benefit under such claim then in that event the Licensor shall forthwith transfer to the Licensee such benefit or pay the amount so received or recovered by the Licensor.

On expiry of the Licence, subject to the claims made or to be made as a result of any event that may have occurred during the Licence Period, the Licensee shall assign in favour of Licensor all its rights, title and interests under insurance policy(ies), if any. If any claim is made by the Licensee and the same is not settled by the insurance company prior to expiry of the Licence Period or earlier termination, as the case may be, then in spite of such assignment, the Licensee shall be entitled to receive the amount in respect of such claim.

#### **8.4 Designation of Key Personnel of the Licensor**

The Licensee agrees that 8 Months prior to the expiry of the Licence Period the designated key personnel of the Licensor shall, at the cost of the Licensor, be associated with the operations of the Terminal, in order to facilitate smooth take-over of the Terminal by the Licensor.

#### **8.5 Cancellation of Contracts**

On the expiry of the Licence Period, the Licensee shall, if so required by the Licensor, cancel or terminate all or any of the existing agreements and/or arrangement and/or contracts between the Licensee and third parties, pertaining to this Project. The Licensee will not be entitled to any compensation whatsoever for any loss or damage caused to or suffered by it as a result of any such cancellation or termination nor the Licensor shall be liable to pay any amount which the Licensee may be required to pay to such third party as and by way of damage for cancellation or termination of such agreement and/or arrangement and/or contract.

#### **8.6 Passing of Risk**

Until the expiry of the Licence Period the Terminal shall remain at the sole risk of the Licensee for any loss of or damage caused to or suffered by Licensee for any reasons whatsoever to the whole or any part of the Terminal, unless such loss or damage caused to or suffered by the Licensee is due to any act of omission or commission or negligence on the part of the Licensor under this Agreement.

The Licensor shall be solely responsible for any loss of or damage caused to or suffered by Licensor for any reasons whatsoever to the whole or any part of the Terminal after the Terminal is transferred to the Licensor as per the provisions of this Agreement.



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#### **8.7 Transfer Costs**

Save as otherwise provided, the transfers and assignments pursuant to Articles 8.1 through Article 8.6 shall be without payment of any compensation by the Licensor to the Licensee. All statutory payments related to such transfer shall be borne by the respective Parties, as applicable, in accordance with the then prevailing Law.

#### **8.8 Transfer Procedure**

Eight (8) Months prior to the end of the Licence Period, the Licensor and the Licensee shall meet and agree on detailed procedures for the transfer of the Terminal. At the time of such meeting, the Licensee shall submit a detailed list of the structures including berths, equipment, facilities and items to be transferred and the names of its representatives in charge of the transfer, and the Licensor shall inform the Licensee of the names of its representatives in charge of the transfer.

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# **V GENERAL**

## **OBLIGATIONS OF THE**

### **PARTIES**

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Approvals, Permits, Licenses and Clearances

The Licensor shall obtain all the permits, licenses and clearances necessary for the performance of the obligations of the Licensee under this Agreement. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances. The Licensor shall be responsible for obtaining all the permits, licenses and clearances necessary for the performance of the obligations of the Licensee under this Agreement. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances.

#### **5.2 Peaceful Possession**

The Licensor represents that the Licensee is the absolute owner of the Licensed Property and that no other party has any claim, right, title or interest in the Licensed Property. The Licensee shall have the right to use the Licensed Property for the purposes of the License. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances.

The Licensee shall have the right to use the Licensed Property for the purposes of the License. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances. The Licensee shall have the right to use the Licensed Property for the purposes of the License. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances.

#### **5.3 Non-Interference**

The Licensee shall not interfere with the performance of the obligations of the Licensor under this Agreement. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances. The Licensee shall have the right to use the Licensed Property for the purposes of the License. The Licensee shall not be responsible for obtaining any such permits, licenses and clearances.

### **9.1 Assistance for Approvals, Permits, Licences and Clearances**

The Licensor shall at the request and costs, charges and expenses of the Licensee, do all such acts, deeds and things that the Licensee may require to be done jointly or individually with respect to any applications or clearances sought from any authority for any issues pertaining to the project, the requirements of Licensor becoming necessary or essential by virtue of its ownership of the land and water. The Licensor's obligation under this Article 9.1 shall not relieve the Licensee of its obligations under this Agreement to obtain and renew the required approvals, clearances and Permits.

### **9.2 Peaceful Possession**

The Licensor represents that the Licensor is the absolute owner of the Licensed Premises and no other party has any claim, right, title or interest whatsoever into or upon the Licensed Premises and that the Licensed Premises is free from all encumbrances. The Licensor further represents that the Licensor has absolute authority and is entitled to enter into this Agreement, the Licence having been duly approved by the Government in accordance with the Major Port Trusts Act, 1963.

Subject to the Licensee complying with the terms and conditions of this Agreement the Licensee shall remain in and enjoy peaceful possession of the Licensed Premises during the Licence Period. In the event the Licensee is obstructed by any other party, person or persons claiming any right whatsoever to the premises covered by the Licence, the Licensor shall, if called upon by the Licensee, defend such claims made by such party or person(s). The Licensor shall also ensure that the Licensee has unfettered access to the Licensed Premises within the Port area.

### **9.3 Non-Interference**

Subject to the provisions of this Agreement, the Licensor shall not interfere or cause any hindrance in the design, construction, operation, maintenance and repair of the Terminal save as may be necessary to protect public health and safety or for the discharge of its statutory duties. At the request of the Licensee, the Licensor shall use its best efforts to alleviate any interference by third parties in the Terminal.



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#### **9.4 Responsibility of Employees**

The Licensor shall be solely responsible for any acts or labour unrest by its employees or its agents/its contractors and it shall be solely liable for any loss/damage caused to the Licensee due to such acts or labour unrest.

#### **9.5 Exclusivity Rights**

The Licensor agrees that it shall commission / grant concession to any other party to commission additional facilities for handling coal / coke within the Port limits if and only if any of the following takes place:

- (a) the throughput of coal / coke cargo handled at the Terminal exceeds 4,000,000 (four million) MTs per annum, or
- (b) the Terminal, or any part thereof, is operated as a dedicated user facility and is not available to other consignees for handling similar type of cargo.

Upon commissioning of the Terminal, the handling of coal / coke at any of the existing berths within the Port, shall be discontinued. However, the Licensor shall be entitled to handle coal / coke cargo in any of the berths within the Port in exceptional circumstances as mutually agreed in writing between the Parties. However, the present handling of coal / coke in mid-stream will continue by certain importers, even after the Terminal becomes operational.

Notwithstanding the foregoing, the Licensor may allow putting up off-shore terminals or floating terminals in the water spread area of the Port either within the Port limits or outside.

#### **9.6 No Hindrance**

The Licensor shall ensure that construction/ development and operation of the Port will not adversely affect or cause hindrance to the construction / development and operation of the Terminal.

#### **9.7 Approvals**

The Licensor\* shall grant the required approvals to the Licensee as provided for in this Agreement and such approvals shall not be unreasonably withheld.

#### **9.8 Exemption of Wharfage**

No wharfage shall be levied by the Licensor on items/ equipment brought in for the purpose of setting up of the proposed Terminal through the Licensed Premises by the Licensee until commissioning of the Terminal. Also wharfage shall not be charged for any equipment/ machinery brought in by the Licensee for the purpose of Maintenance/ Augmentation of the Terminal after the commissioning thereof till the expiry of the Licence Period through the Terminal.

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## 9.9 Taxes

The Licensor agrees and undertakes that during the Licence Period it shall pay all taxes, duties, levies, cess, assessment charges, if any, including but not limited to Income or Corporate Taxes that may be levied, claimed or demanded from time to time from the Licensor by any Government Authority or any other statutory body or corporation under any law, statute or any amendments to existing laws and statutes in respect of or in connection with the Terminal.

## Ownership

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## **10 GENERAL OBLIGATIONS OF THE LICENSEE**

### **10.1 Safety and Security Measures**

The Licensee shall follow all safety norms as prescribed by the competent authority.

The Licensee shall within 24 hours of the occurrence of any accidents at or about the site or in connection with the execution of the work including its employees/workmen shall report such accidents to the Chief Engineer. The Licensee shall also report such accidents to the competent authorities, such as, Police Department, Inspector of Docks Safety, etc. to whom such report is required to be legally submitted.

The Licensor's Port is an area with restricted entry. The entry/exit of materials and personnel of the Licensee and their passage within the Port area is subject to the Port's safety and security regulations as in force from time to time.

The Licensee shall be entitled to have its own security force within the Licensed Premises exclusively at its cost. However, the overall security of the Port property shall be the responsibility of the Licensor.

The Licensee shall ensure that construction / development and operation of the Terminal and other facilities will not adversely affect or cause any hindrance to any other construction / development or operation of The Port.

### **10.2 Ownership**

The Licensee shall not during the Licence Period register the transfer of shares held by ABG Heavy Industries Ltd. (hereinafter referred to as the said ABG) in favour of any person/s ("transferee") unless and until the said ABG produces alongwith the share transfer form/s approval in writing of the Licensor for the transfer of such shares.

The Licensee further agrees to comply with such terms and conditions as may be imposed by the Licensor while granting the Licensee the permission(s) to register the transfer of shares held by ABG. The Licensee shall do all such acts deeds and things which the Licensee may be required to do to give effect to the terms and conditions on which such permission(s) is / are granted including but not limited to entering into a shareholding agreement (as approved by the Licensor) with such transferee in order to ensure that the provisions of this agreement are binding on the transferee, amending its (the Licensee's) Memorandum of Association and Articles of Association, ensuring the passing of necessary general & / or special resolutions etc.

The Licensee may, subject to what is stated hereinafter, during the Licence Period, issue fresh equity in favour of any person(s) at its discretion. The



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Licensee agrees and undertakes that it shall not, during the Licence Period, issue fresh equity in favour of any person(s) other than the said ABG if in the opinion of the Licensors such an issue of fresh equity in favour of such person(s) would be against national interest or as a result of such an issue of fresh equity, the Terminal is likely to be used for illegal activities or if such an issue of fresh equity would be detrimental to the interest of the Project.

However, this shall not apply for the persons of the General Public in case of Public Offer of shares by the Licensee.

The Licensee shall ensure that the said ABG shall continue to hold minimum share holding of 26% (twenty six percent) of the issued and paid up equity share capital of the Licensee for a minimum period of 10 (ten) years from the Date of Commercial Operation and that at all times during the Licence Period the said ABG shall hold not less than 10% (ten percent) of the issued and paid up share capital of the Licensee.

The Licensee shall also ensure that in the event the Licensors granting necessary permission to the said ABG to reduce its share holding or to reduce its share holding below 26% (twenty six percent) in favour of any person(s) as suggested by the said ABG, the percentage of issued and paid up equity share capital held by the said ABG shall at no point of time be less than the percentage of issued and paid up equity share capital held by such person(s).

### **10.3 Additional Facilities to be Provided**

The Licensee agrees to provide for the additional facilities, as required and determined by the Licensee at its discretion, in the Terminal based on the layout of the Terminal, from time to time, and the Licensee shall be free to change such additional facilities at its discretion. However, the Licensee shall at all times keep the Licensors informed.

### **10.4 Submission of Financing Documents**

The Licensee shall submit to the Licensors the Financing Documents, if any, from time to time for the information of the Licensors.

### **10.5 Environmental Protection**

The Licensee shall be fully responsible to ensure that the environment in general, and the water area in particular, is not polluted due to the operations of the Terminal. All statutory regulations and conventions in this connection shall be fully adhered to by the Licensee. The Licensee shall give clear indications about the disposal arrangements for coal dust slurry, scrap materials and other wastes at the stage of approval of layout drawings, etc. The Licensee shall be solely responsible to obtain all statutory clearances as may be required by law including environmental clearance. The Licensors will provide assistance to the extent possible in this regard. However, this will not be obligatory on the Licensors and the Licensee shall take full responsibility for obtaining the

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necessary clearance. The Licensee agrees and undertakes to comply with other regulations and directives concerning occupational hazards, as issued by the Licensor and relevant authorities from time to time.

#### **10.6 Permits**

The Licensee shall at all times maintain valid Permits or licences that may be required for construction and operation of the Terminal. Such Permits or licences shall be obtained by the Licensee at its cost from the concerned Government Authority.

#### **10.7 Taxes, Customs Duties and Charges**

The Licensee agrees and undertakes that during the Licence Period it shall pay all taxes, duties, levies, cess, assessment charges including but not limited to Income or Corporate Taxes, Customs Duties on imported material, equipment, machinery and spare parts that may be levied, claimed or demanded from time to time from the Licensee by any Government Authority or any other statutory body or corporation under any law, statute or any amendments to existing laws and statutes in respect of or in connection with construction and development, operation and maintenance of the Terminal.

Tax benefits and/or concessions available for the Licensee for investing in infrastructure facilities shall be ascertained by the Licensee. The Licensor may issue recommendatory letters, if required, as per procedure. The responsibility for getting any notification issued by any Government Authority for any benefits and/or concessions in taxes and/or customs duties and/or charges shall rest with the Licensee.

#### **10.8 Insurance**

##### **10.8.1 Insurance to be Maintained**

The Licensee shall, at its cost and expense, undertake and maintain insurance(s) as may be required by the Lenders. The Licensee agrees and undertakes to retain such necessary insurance throughout the Licence Period even after the Lenders' liability is discharged. However, irrespective of the Lenders' requirements, the Licensee shall undertake and maintain during the Licence Period such necessary insurance covers.

##### **10.8.2 Evidence of Insurance Cover**

Copies of all insurance policy(ies) (or appropriate endorsements, certifications or other satisfactory evidence of insurance) shall be delivered to Licensor by the Licensee.

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### **10.8.3      *Application of Insurance Proceeds***

Subject to the provisions of this Agreement, all moneys received under any such policy(ies) shall be promptly applied by Licensee towards repair or renovation or restoration or substitution of Terminal or any part thereof, which may have been damaged or destroyed. The Licensee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Terminal or any part thereof, shall, after such repair or renovation or restoration or substitution be in nearly the same or as good condition as it was before such damage or destruction. The Licensee shall proceed with such repair or renovation or restoration or substitution work as soon as reasonably possible after such damage / destruction irrespective of whether it has received its insurance claims or not.

### **10.8.4      *Validity of the Insurance Cover***

The Licensee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Licence Period or till Termination, as the case may be, and furnish copies of the same to the Licensor.

## **10.9      Responsibility of Employees**

The Licensee shall be solely responsible for any acts or labour unrest by its employees or its agents/its contractors and it shall be solely liable for any loss/damage caused to the Licensor due to such acts or labour unrest.

## **10.10      Indemnification**

- (a) In the event of the Licensor's floating crafts damaging any of the property of the Licensee during the course of navigational activities, the Licensor shall be held blameless and not liable for any payment whatsoever in this regard. The Licensee shall take into account the conditions stipulated in Clause 121 of the Major Port Trusts Act, 1963.
- (b) The Licensee hereby agrees and undertakes that, during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensor, 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 or put 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 Licensor, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Licensee or as a result of failure on the part of the Licensee to perform any of its obligations under this Agreement or on the Licensee committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensee to perform any of its statutory duty and/or obligations or failure or negligence on the part of the Licensee to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or



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owners of goods or vessel owners/agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensee or its contractor(s), sub-contractor(s), sub-licensees, invitees, or employees, servants, agents of such contractor(s) and/or sub-contractor(s) and/or sub-licensees 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 Licensee's use and occupation of Licensed Premises and/or Terminal.

- (c) In addition, the Licensee also agrees to indemnify the Licensor, its agents and employees in respect of all cost and expenses incurred by it in prosecuting or defending any action or suit (civil or criminal) by any third party which Licensor, its agents and employees is forced to initiate to protect its interest or forced to defend in connection with or arising out of this Agreement.
- (d) Subject to (a) above, The Licensor hereby agrees and undertakes that, during the Licence Period it shall indemnify and keep indemnified and otherwise save harmless, the Licensee, 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 or put 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 Licensee, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Licensor or as a result of failure on the part of the Licensor to perform any of its obligations under this Agreement or on the Licensor committing breach of any of the terms and conditions of this Agreement or on the failure of the Licensor to perform any of its statutory duty and/or obligations or failure or negligence on the part of the Licensor to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owners of goods or vessel owners/agents or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Licensor or its contractor(s), sub-contractor(s), sub-licensees, invitees, or employees, servants, agents of such contractor(s) and/or sub-contractor(s) and/or sub-licensees and/or invitees as the case may be, in connection with or arising out of this Agreement.

#### **10.11 Assignability**

The Licensee shall not assign the Licence or any part thereof or any benefit or interest therein or thereunder to any other party without prior written consent of the Licensor except for the limited purpose of assigning the Licence or any part thereof to the Lenders for raising debt finance. The Licensor shall execute necessary documents for giving effect to such assignability and security created, if any, as reasonably required.

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## 10.12 Security Deposit

The Licensee shall submit, on or before the Date of Award of Licence, a Security Deposit through any of the two means outlined below:

- (i) Deposit, by means of a crossed demand draft, an amount equivalent to first year's Licence Fee amounting to Rs. 1,52,25,840/- (Rupees one crore fifty two lakhs twenty five thousand eight hundred and forty only). The Licensor may at its option forthwith forfeit the above Security Deposit in whole or part if in the opinion of the Licensor the Licensee has failed to fulfil any or all of the stipulated conditions herein and the Licence granted herein shall be liable to be terminated.

or

- (ii) Submit an irrevocable Bank Guarantee from the State Bank of India or any one of the nationalised banks or any one of the scheduled banks (in case of a Bank Guarantee from a scheduled bank, such bank shall have to be approved by the Licensor) for an amount equivalent to the first three years Licence Fee amounting to Rs. 4,79,99,461 (Rupees Four crores Seventy Nine lakhs Ninety Nine thousand Four hundred Sixty One only) and at the end of every three Year period, this amount shall be enhanced or replaced by another Bank Guarantee of an amount equivalent to the next three Years' Licence Fee. The bank would undertake to pay this sum to the Licensor, if in the opinion of the Licensor, the Licensee has failed to abide by the conditions stipulated in the agreement and that the said payment would be made by the Bank without demur or protest on a demand made on behalf of the Licensor. This Guarantee shall be irrevocable and unconditional and shall be of a bank having its office/branch in the state of Goa.

The Security Deposit forming part of this Licence shall be furnished throughout the life of this Licence, or any renewal thereof, and this shall be without prejudice to all other rights of the Licensor under this agreement or any other provisions of law. The Licensee guarantees to furnish to the Licensor, in the event of cancellation or termination of said Security Deposit, a new Security Deposit effecting the same guarantees to the Licensor. In case the Licensor forfeits /encashes the Security Deposit or any part thereof subject to the provisions of this Article but does not proceed with the Termination Process, the Licensee shall replenish the Security Deposit within 30 Days.

The Security Deposit shall be held by the Licensor free of interest during the Licence Period and for a period of 3 Months until after expiry of the Licence Period and shall be refunded to the Licensee, free of interest, subject however to appropriation of any amounts by Licensor towards its claim under this Agreement including damages, if any, payable by the Licensee under the provisions of this Agreement.

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### **10.13 Transfer of technology and Know-how**

The Licensee agrees and undertakes to transfer technology and up-to-date know-how, wherever applicable, to design, construct, operate, manage, maintain the Terminal.

### **10.14 Rights to sub-license**

The Licensee shall not, without the prior written consent or approval of the Licensor, grant or create lease or tenancy or any third party right, title or interest or grant Licence or sub-Licence or sublet in respect of the Terminal or any part thereof failing which the Licensor shall be entitled to terminate this Agreement. The Licensor may grant such consent or approval on such terms and conditions as it deems fit and proper. However grant of such consent or approval shall not absolve the Licensee of any of its obligations and/or liabilities under this Agreement and notwithstanding such consent or approval the Licensee shall at all times remain responsible for its obligations under this Agreement. The Licensee shall also be responsible for the acts, defaults, and neglects of any sub-licensee, and its agents, servants or workmen as if these were the acts, defaults or neglects of the Licensee, its agents servants or workmen.

### **10.15 Avoidance of Damage to Properties**

The Licensee shall take all precautions whilst carrying out the Contract work against any possible damage to any property of the Licensor within the Licensed Premises. Should any such damage be done by the Licensee, it shall make good or bear the cost of making good the same, when brought to its notice without delay, to the satisfaction of the Licensor.

### **11.3 Confidentiality**

All information and documents (whether printed, technical or otherwise) submitted by either Party or its agents which are not otherwise publicly available must be kept confidential and not disclosed to third parties or the public without the prior written approval of the other Party. Where no approval is given, the disclosure shall constitute a breach of this Agreement. This covenant shall survive the expiry of the term of this Agreement or the termination or the date may be of this Agreement.

### **11.4 Obligation to Co-operate**

The Parties shall mutually co-operate with each other in order to achieve the purposes of this Agreement.



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## **11 OBLIGATIONS AND RIGHTS COMMON TO LICENSOR AND LICENSEE**

### **11.1 Compliance with Laws and Regulations**

The Parties shall at all times perform its obligations under this Agreement in accordance with the existing law and shall at all times observe and comply with all relevant existing and applicable laws. The Parties shall at all times observe with all relevant laws, regulations in respect of the Project.

### **11.2 Rights to Documents**

#### **11.2.1 *Licensor Documents***

Documents and computer programs or copies thereof, if any, provided by the Licensor to the Licensee, shall always remain the property of the Licensor. Such documents, computer programs and/or copies shall not be used by the Licensee for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall be returned by the Licensee to the Licensor on the expiry of the Licence Period or early Termination of this Agreement, unless otherwise agreed upon between the Licensor and the Licensee.

#### **11.2.2 *Licensee Documents***

Documents and computer programs of the Licensee which are developed for operation and/or maintenance of the Project, if any, shall be handed over by the Licensee to the Licensor free of cost at the expiry of the Licence Period or early Termination of this Agreement.

### **11.3 Confidentiality**

All information and documents (whether financial, technical or otherwise) obtained by either Party or its agents which are not otherwise publicly available must be kept confidential and not disclosed to third parties or the public without the prior written approval of the other Party except as required by law or pursuant to this Agreement. This covenant shall survive on expiry of Licence Period or early Termination as the case may be, of this Agreement.

### **11.4 Obligation to Co-operate**

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

## 11.5 Sharing of Resources

It is agreed between the Parties that although the Terminal of the Licensee and the facilities of the Licensor are envisaged to operate independently of each other, in order to optimise the facilities and create synergies, sharing of various resources may be considered at appropriate time on mutually agreed terms and conditions between the Licensor and the Licensee.

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## **12 FORCE MAJEURE**

### **12.1 Force Majeure Event Defined**

As used in this Agreement, a Force Majeure Event shall mean any or all of the Non-Political Events, Indirect Indian Political Events and/or Direct Indian Political Events as defined hereunder in Article 12.2 which (or the consequences of which) materially and adversely affect the Party claiming Force Majeure (the "Affected Party") from performing its obligations in whole or in part under this Agreement and which are beyond the reasonable control and not the fault of the Affected Party and which (or the material and adverse effect of which) the Affected Party could not have prevented by the exercise of reasonable skill and care.

### **12.2 Types of Force Majeure Events**

#### **12.2.1 Non-Political Force Majeure Events**

- (i) act of God such as storm, lightning, cyclone, hurricane, earthquake, volcanic eruption, flood or landslide;
- (ii) fire, explosion, accident, breakage of facilities, equipment, structural collapse or chemical contamination caused by a person not being the Affected Party or any of its employees or agents or any of its contractors or sub-contractors or any of their respective employees or agents and not being due to inherent defects of the Terminal or any part thereof or the failure of the Licensee to properly construct, develop, operate and maintain the Terminal or any part thereof;
- (iii) epidemic or famine;
- (iv) radioactive contamination, nuclear blast or ionising radiation not due to an act of war;
- (v) aircrash, shipwrecks;
- (vi) strikes or lockouts interrupting supplies and services to the Project (other than those involving the Licensee, its employees or agents or its contractors or sub-contractors or any of their respective employees or agents or any strike or lockout attributable to any unfair policy or practice of the aforementioned persons) not being an Indirect Indian Political Event as set forth in Article 12.2.2 under this Agreement;
- (vii) any event or circumstance of a nature analogous to any of the above.

#### **12.2.2 Indirect Indian Political Force Majeure Events**

- (i) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection,



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- terrorist or military action, civil commotion, act of terrorism or politically motivated sabotage;
  - (ii) industry wide or state or nation wide strikes or industrial action, strikes by the employees of the Licensor or the Railways;
  - (iii) any failure or delay of a main contractor executing a contract of significant value for the Project but only to the extent caused by another Indirect Indian Political Force Majeure Event;
  - (iv) any event or circumstance of a nature analogous to any of the above.

### **12.2.3 Direct Indian Political Force Majeure Events**

- (i) Change in Law affecting construction and operation of the Terminal under the provisions of this Agreement;
- (ii) expropriation or compulsory acquisition by any Government Authority of any material assets or rights of the Affected Party or its contractors or agents except to the extent that it constitutes a remedy or sanction lawfully exercised by the Government Authority as a result of any breach by the Affected Party, its contractors or agents of any applicable Law.

### **12.2.4 Force Majeure Exclusions**

None of the following shall, without limitation, constitute a Force Majeure Event:

- (i) late or non-delivery of equipment, materials, spare parts, water, power or other utilities for the Project unless the delay is due to a Force Majeure Event as defined above;
- (ii) insufficiency of funds or non-availability of working capital for any reason whatsoever;
- (iii) non-performance resulting from normal wear and tear typically experienced in the operations of/in the Terminal;
- (iv) non-performance caused by or connected with the Licensee's/ Licensor's
  - negligent or intentional acts or omissions;
  - failure to comply with the applicable Law then in effect;
- (v) default under this Agreement by either Party.

## **12.3 Obligation of the Parties to perform**

The obligations and liabilities of the Parties under this Agreement would continue as long as the performance is not impeded by Force Majeure Event as defined above in Article 12.1. The Affected Party shall resume performance of its obligations under this Agreement as soon as possible after the Force Majeure Event ceases to exist.

Provided that the performance of the Licensee's obligations and liabilities shall, for the Period of Force Majeure, be governed as per and be subject to the provisions of Article 12.5. Nothing in this Article 12 absolves the Licensee from

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the obligation of payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

## **12.4 Procedure**

### **12.4.1 Notice**

The Affected Party shall give notice to the Other Party in writing of the occurrence of any of the Force Majeure Event as soon as the same arises, and in any event within 7 (seven) Days

- after the knowledge by the Affected Party of such Force Majeure Event; or
- after the Affected Party ought to reasonably have knowledge of its occurrence.

Notice shall inter-alia include full particulars of:

- (i) the nature of each Force Majeure Event
- (ii) the date and time effective when the performance by the Affected Party of its obligations under this Agreement, was affected;
- (iii) the effect which such Force Majeure Event is having on the performance by the Affected Party of its obligations under this Agreement;
- (iv) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events or mitigate the damage; and
- (v) any other relevant information.

### **12.4.2 Reporting requirement**

For so long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the Other Party with regular (and not less than Monthly) written reports containing

- (i) the information called for by Article 12.4.1; and
- (ii) such other information as the other Party may reasonably request.

## **12.5 Relaxation In Case of Force Majeure**

During the Period of Force Majeure

- (a) The Licensor may, on receipt of a written request by the Licensee when the Minimum Guaranteed Throughput could not be achieved in a year due to such Force Majeure, make suitable relaxation with the approval of GoI.
- (b) In the event of the Licensee's inability to commence and complete the construction and development of the Terminal within the stipulated time due to Force Majeure, an application for extension of the period of 30 Months may be made to the Licensor and the Licensor may grant extension for such period which in the opinion of the Licensor is reasonable. The decision of the Licensor in the matter as to whether such Force Majeure (applicable to Article 12.5 (b)) existed or not and the period

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of extension to be granted, shall be final and absolute and this discretion shall not be contested by the Licensee.

**Note:** Subject to the other provisions of this Article 12, if the Affected Party claims relief in respect of an event or circumstance of Force Majeure, then the Affected Party shall be deemed not to be in breach of its obligations under this Agreement during the Period of Force Majeure relating to such event or circumstance of Force Majeure to the extent that the performance of such obligations is materially and adversely affected by such event or circumstance of Force Majeure during the Period of Force Majeure relating thereto.

## **12.6 Period of Force Majeure**

In this Article 12, reference to a Period of Force Majeure shall mean the period from the date and time specified in the notice given by the Affected Party in respect of an event or circumstance of Force Majeure, until the earlier of:

- (i) such time as the performance by the Affected Party of its obligations hereunder is no longer or would no longer have been, if the Affected Party had complied with its obligations under this Article 12, materially and adversely affected by such event or circumstance of Force Majeure; and
- (ii) if this Agreement is terminated pursuant to Article 12.7 by reason of the event or circumstances of Force Majeure, the date in respect thereof of service of such notice.

When the Affected Party is able, or would have been able if it had complied with its obligations under the provisions of this Article 12, to resume performance of all of its obligations, under this Agreement, affected by the occurrence or continuation of an event or circumstance of Force Majeure, then the Period of Force Majeure relating to such event or circumstance of Force Majeure shall be deemed to have ended and the Party affected by the Force Majeure Event shall forthwith give notice to that effect to the Other Party.

## **12.7 Termination Due to Force Majeure Event**

In the event that any such Force Majeure Event shall physically impede or prevent the Affected Party from performing its obligations under this Agreement for more than 90 Days from the date of commencement of such Force Majeure event, the Parties may mutually decide the terms upon which the Licensee shall continue the performance of its obligations or to terminate this Agreement.

If the Parties are unable to agree on such terms or to terminate this Agreement within 90 Days of the date of commencement of such force majeure event, then the Affected Party may terminate this Agreement.

## **12.8 Consultation and Duty to Mitigate**

For so long as the Period of Force Majeure is continuing, the Affected Party shall consult with the Other Party and the Affected Party shall use all reasonable endeavours to alleviate its effects on the performance of its obligations under



this Agreement. The Other Party shall afford reasonable assistance to the Affected Party to alleviate the effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.

### 13.1 Termination by the Licensor

The Licensor shall be entitled to terminate this Agreement in the event of the Licensee's failure to comply with any or all of the terms of this Agreement. This termination shall not be invoked except in extreme circumstances and without undue delay.

### 13.2 Termination by the Licensee

The Licensee shall be entitled to terminate this Agreement in the event of the Licensor's failure to comply with any or all of the terms of this Agreement. This termination shall not be invoked except in extreme circumstances and without undue delay.

### 13.3 Right of Determination

The Licensor may, if required by the Government in the national interest or by the Licensee for its own use, determine this License, upon six months' notice (Notice of Determination) in writing, in any time during the License Period, on payment of compensation in accordance with the formulations as approved by the Government.

### 13.4 Termination Procedure

#### 13.4.1 Notice of Intent to Terminate

On the happening of any event giving either Party the right to terminate this Agreement as set out in Article 13.1 or Article 13.2, as the case may be, the Non-Defaulting Party may initiate termination of this Agreement by delivering a written Notice of Intent to Terminate to the Defaulting Party. The Non-Defaulting Party shall also send copy of the Notice of Intent to Terminate to the Lawless.

On the Notice of Intent to Terminate, the Party giving notice must specify in reasonable detail the Event(s) of Default committed by the Defaulting Party. Service of a Notice of Intent to Terminate by one Party shall not at any time preclude the Non-Defaulting Party from issuing subsequent Notice of Intent to Terminate for subsequent breaches committed by the Defaulting Party. Similarly, it shall not preclude the Defaulting Party to issue Notice of Intent to Terminate to the Non-Defaulting Party for any breach committed by the latter.

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## 13 **TERMINATION AND COMPENSATION**

### 13.1 **Termination by the Licensor**

The Licensor shall be entitled to terminate this Agreement in the event of the Licensee's failure to comply with any or all of the terms of this Agreement. This provision shall not be invoked except in extreme circumstances and without genuine reasons.

### 13.2 **Termination by the Licensee**

The Licensee shall be entitled to terminate this Agreement in the event of the Licensor's failure to comply with any or all of the terms of this Agreement. This provision shall not be invoked except in extreme circumstances and without genuine reasons.

### 13.3 **Right of Determination**

The Licensor, may, if required by the Government in the national interest or by the Licensor for its own use, Determine this Licence, upon six Months notice (**Notice of Determination**) in writing, at any time during the Licence Period on payment of compensation in accordance with the formulations as approved by the GoI.

### 13.4 **Termination Procedure**

#### 13.4.1 **Notice of Intent to Terminate**

On the happening of any event giving either Party the right to terminate this Agreement as set out in Article 13.1 or Article 13.2, as the case may be, the Non-Defaulting Party may initiate termination of this Agreement by delivering a notice to the Defaulting Party of its intention to terminate this Agreement (**Notice of Intent to Terminate**). The Non-Defaulting Party shall also send copy of the Notice of Intent to Terminate to the Lenders.

In the Notice of Intent to Terminate, the Party giving notice must specify in reasonable detail the Event(s) of Default committed by the Defaulting Party. Service of a Notice of Intent to Terminate by one Party shall not at any time preclude the Non-Defaulting Party from issuing subsequent Notice of Intent to Terminate for subsequent breaches committed by the Defaulting Party. Similarly it would not preclude the Defaulting Party to issue Notice of Intent to Terminate to the Non-Defaulting Party for any breach committed by the latter.

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#### **13.4.2 No disposal of assets**

In the event of a Notice of Intent to Terminate being issued by either Party, the Licensee is thereafter precluded from disposing or taking steps to dispose off the assets as are listed in Appendix IX without the prior written permission of the Licensor.

#### **13.4.3 Lenders rights to rectify**

If Notice of Intent to Terminate is issued by the Licensor for non payment of any amount due and payable by the Licensee then, at any time following the service of Notice of Intent to Terminate, the Lenders may, on behalf and instead of the Licensee, pay all sums then due and payable to the Licensor. On payment by Lenders of such outstanding amounts

- such Notice of Intent to Terminate shall stand revoked (but without prejudice to rights of Licensor to issue similar notice for any subsequent breach or any other breaches by the Licensee); and
- the Licensor shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate was not issued.

#### **13.4.4 Consultation Period**

Following the serving of a Notice of Intent to Terminate, the Parties shall consult for a period of 120 Days or such further period as the Parties may mutually agree (**the Consultation Period**) as to what steps have been taken or proposed to be taken with a view to rectifying or remedying the Event of Default giving rise to issue of the Notice of Intent to Terminate. The Parties may mutually agree to waive the Consultation Period in respect of a Notice of Intent to Terminate served by the Non-Defaulting Party.

During the period following the delivery of the Notice of Intent to Terminate, the Defaulting Party may continue to undertake efforts to cure the Event of Default, and Non-Defaulting Party shall not, by any act or omission, impede or otherwise interfere with Defaulting Party's endeavours to remedy the Event of Default which gave rise to the commencement of such Consultation Period.

During Consultation Period, both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

#### **13.4.5 Withdrawal of Notice of Intent to Terminate**

If the Defaulting Party rectifies or remedies the Event of Default to the satisfaction of the non Defaulting Party or the Non-Defaulting Party is satisfied with steps taken or proposed to be taken by the Defaulting Party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the Non defaulting Party shall withdraw the Notice of Intent to Terminate. Withdrawal of the Notice of Intent to Terminate shall be in writing with a copy to the Lenders.

#### **13.4.6 Termination Notice**

Upon the expiry of the Consultation Period, unless the Parties shall have otherwise agreed or the Event of Default giving rise to the Notice of Intent to



Terminate shall have ceased to exist or the Event of Default has been rectified or remedied, the Non-Defaulting Party may terminate this Agreement by giving a written notice (**Termination Notice**) to the Defaulting Party. Termination will be effective from 180 Days (or such further period as the Parties may mutually agree) from the date of receipt of such Termination Notice by the Defaulting Party (**Date of Taking Over**). The Non-Defaulting Party shall also send copy of the Termination Notice to the Lenders.

During the above period of 180 Days both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

#### **13.4.7 Transfer Notice**

On the Non-Defaulting Party (whether it be the Licensor or the Licensee) serving a Termination Notice on the Defaulting Party, the Licensor shall be entitled to serve upon the Licensee a Transfer Notice calling upon the Licensee to provide the following:

- (i) full details of amounts outstanding under the Financing Documents related to the Project;
- (ii) all or any data or records regarding the operation or maintenance of the Licensed Premises and/or the berths; and
- (iii) any other information or records regarding Licensee, its business, assets and liabilities;

to enable the Licensor to estimate the likely liability of it, if any. The Licensee agrees and undertakes to furnish accurate information in these respects along with documentary evidence within 60 Days from the date of receipt of such Transfer Notice.

#### **13.4.8 Replacement Notice by the Lender**

Within 30 Days from the date of service of a Termination Notice by either Party, the Lenders (individually or jointly, but in no case representing less than 30% of the debt outstanding, including interest and principal) may approach the Licensor with a request to replace the Licensee by another operator (**Replacement Notice**) for operating the berths under this Agreement. The Replacement Notice shall indicate the name(s) of the operator(s) proposed to continue this Agreement in place of the Licensee.

Within 30 Days of receipt by the Licensor of a Replacement Notice, the Licensor shall invite the representatives of all the Lenders and the Licensor and such representatives shall consult for a period of 120 Days from the date of receipt of such Replacement Notice about appointment of the Replacement Operator. The Licensor shall have the right to reject the operator(s) proposed in the Replacement Notice if in the opinion of the Licensor such operator(s) would prejudice the national security or interests or such operator(s) do not possess the requisite technical expertise and financial capability or experience of running the Terminal. Alternatively, the Licensor itself may suggest a Replacement Operator and the Lender may consider such proposal. The Replacement Operator must be acceptable to the Lenders representing at least 51% of the debt outstanding, including interest and principal.

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The Licensor may grant such permission for Replacement Operator on terms and conditions not inferior to the terms and conditions of this Agreement, as may be mutually agreed upon between the Lenders and/or the Replacement Operator and the Licensor. In the event of Licensor granting such permission, the Licensee shall transfer all its rights, title and interests in the Terminal pursuant to this Agreement in favour of the Replacement Operator. In such an event this Agreement shall come to an end. The decision of the Licensor to grant or not to grant the permission for Replacement Operator shall be final and binding.

#### **13.4.9 Termination Order**

##### **13.4.9.1 Termination Order for an event of default**

If Termination Notice is issued by Licensee then and in that event, on expiry of the period of Termination Notice, the Licensee may terminate this Agreement by serving upon the Licensor a Notice (**Termination Order**) with a copy to the Lenders.

If Termination Notice is issued by Licensor and if the Licensor has refused to grant permission for Replacement Operator, then on expiry of the period of Termination Notice the Licensor may terminate this Agreement by serving upon the Licensee Termination Order with a copy to the Lenders.

##### **13.4.9.2 Termination Order for an event of Determination**

The Licensor shall serve the Licensee a Termination Order in the event of the Licensor having served a Notice of Determination as per the provisions of Article 13.3. The Licensor shall also send a copy of the Termination Order to the Lenders.

##### **13.4.9.3 Termination Order for an event of Force Majeure**

The Licensor shall serve the Licensee a Termination Order in the event of the Parties mutually deciding to terminate this Agreement as per provisions of Article 12.7. The Licensor shall also send a copy of the Termination Order to the Lenders.

In the event of the Parties not being able to mutually agree to terminate this Agreement due to a Force Majeure Event then the Party affected by the Force Majeure Event shall serve the Termination Order on the Other Party, as per the provisions of Article 12.7 and with a copy to the Lenders.

##### **13.4.9.4 Consequences of a Termination Order**

If the Termination Order is issued in accordance with the provisions of this Agreement, then, whether the Termination Order is issued by Licensee or the Licensor, in either event,

- (i) Provided that, as at the date of Termination Notice, the berths being in good and working condition, as certified by the Expert, the Licensor will take over the berths on payment of compensation.

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- (ii) The Licensor reserves the right to decide whether or not to purchase the other assets created or provided by the Licensee as on the date of Termination Notice on payment of Compensation.

### **13.5 Rights & Obligations of the Parties in event of Termination**

- (i) the Licensee shall at its cost, charges and expenses take steps to transfer all its rights, title and interests in the Terminal, in favour of Licensor, free of all encumbrances;
- (ii) the Licensee shall, hand over and put the Licensor in peaceful possession of the Terminal subject to Article 13.4.9.4 within 30 Days from the date of Termination Order;
- (iii) the Licensor shall pay the amount of Compensation as per provisions of Article 13.6 within a period of 210 Days from the date of the Termination Order or such other date as may be mutually agreed upon by the Licensor and the Lenders. However, in case of Determination, such mutual agreement shall be between the Licensor, the Licensee and the Lenders;
- (iv) the Licensee shall at its cost, charges and expenses terminate all contracts, sub-contracts that it may have entered into with any third party in respect of the Terminal or any parts thereof, if so required by the Licensor;
- (v) Subject to provisions under Article 8.3 and Article 8.5, the Licensee shall at its cost, charges and expenses transfer all its rights, title and interests in all contracts/ agreements/ licenses/ permits, in respect of the Terminal or any parts thereof, in favour of Licensor, if so required by the Licensor;
- (vi) the Licensor shall be entitled to encash / forfeit the Security Deposit if the Termination is due to the default of the Licensee;
- (vii) the Licensor shall be entitled to recover any amounts in respect of any damage suffered by it which are in excess of the amount of the Security Deposit then subsisting. However, such amount shall not be greater than the Compensation payable under the provisions of the Article 13.6, if any;
- (viii) the Licensee shall not be entitled to make any claim for loss or damage caused or suffered by it as a result of Termination;
- (ix) Until such time as the Terminal or any parts thereof, is handed over by the Licensee to the Licensor, the Parties shall use all reasonable efforts to keep the Terminal operating as per the provisions of this Agreement;
- (x) The Licensor shall be entitled to run the Terminal at its cost from the Date of Taking Over.

### **13.6 Compensation in the event of Termination**

In the event this Agreement is terminated either prior to or after the Date of Commercial Operation, the amount of compensation shall be determined as follows:

#### **13.6.1 Force Majeure**



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**13.6.1.1****Non - Political Force Majeure**

If the Termination Order is issued by the either Party on account of a Non - Political Force Majeure Event pursuant to Article 12.7 of this Agreement, no compensation shall be payable by the Licensor. //

**13.6.1.2****Indirect Indian Political Force Majeure**

If the Termination Order is issued by the either Party on account of a Indirect Indian Political Force Majeure Event pursuant to Article 12.7 of this Agreement the amount of compensation payable to the Lenders, if any, shall be as under:

The aggregate of, as at the Date of Taking Over,

- (i) Lower of the following:
  - the value, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Licensor may decide to take over; and
    - (b) the berths, irrespective of whether they are completed or not, if found to be in good condition, as determined by the Expert.
  - or
  - the total outstanding liability of the Licensee to the Lenders as per the Financing Documents.
- (ii) less dues outstanding, if any, to the Licensor by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,
- (iv) less amounts owed by the Licensee to the Licensor on account of any damage caused by the Licensee, as per the provisions of this Agreement
- (v) add any amounts owed by the Licensor to the Licensee on account of any damage caused by the Licensor, as per the provisions of this Agreement.

**13.6.1.3****Direct Indian Political Force Majeure**

If the Termination Order is issued by the either Party on account of a Direct Indian Political Force Majeure Event pursuant to Article 12.7 of this Agreement, the Licensee shall have the right to approach the GoI for appropriate compensation.

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**13.6.2 Default by Licensor prior to the Date of Commercial Operation**

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If the Termination Order is issued by the Licensee on account of default of the Licensors prior to the Date of Commercial Operation, the amount of compensation payable to the Lenders, if any, shall be as under:

The aggregate of, as at the Date of Taking Over,

- (i) the value, as determined by the Expert, of
  - (a) the tangible assets other than the berths in the Terminal and which the Lensors may decide to take over; and
  - (b) the berths, irrespective of whether they are completed or not, if found to be in good condition, as determined by the Expert.
- (ii) less dues outstanding, if any, to the Lensors by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,
- (iv) less amounts owed by the Licensee to the Lensors on account of any damage caused by the Licensee, as per the provisions of this Agreement.
- (v) add any amounts owed by the Lensors to the Licensee on account of any damage caused by the Lensors, as per the provisions of this Agreement.

### **13.6.3 Default by the Licensee prior to the Date of Commercial Operation**

If the Termination Order is issued by the Lensors on account of default of the Licensee prior to the Date of Commercial Operation, the amount of compensation payable to the Lenders, if any, shall be as under:

The aggregate of, as at the Date of Taking Over,

- (i) Lower of the following:
  - the value, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Lensors may decide to take over; and
    - (b) the berths, irrespective of whether they are completed or not, if found to be in good condition, as determined by the Expert.
  - or
  - the total outstanding liability of the Licensee to the Lenders as per the Financing Documents.
- (ii) less dues outstanding, if any, to the Lensors by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,

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- (iv) less amounts owed by the Licensee to the Licensors on account of any damage caused by the Licensee, as per the provisions of this Agreement
  - (v) add any amounts owed by the Licensors to the Licensee on account of any damage caused by the Licensors, as per the provisions of this Agreement.

#### **13.6.4 Default by Licensors after the Date of Commercial Operation**

If the Termination Order is issued by the Licensee on account of default of the Licensors after the Date of Commercial Operation, the amount of compensation payable to the Lenders, if any, shall be as under:

The aggregate of, as at the Date of Taking Over,

- (i) Lower of the following:
  - the value, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Licensors may decide to take over; and
    - (b) the berths, if such berths are found to be in good and working condition, normal wear and tear excepted, as determined by the Expert.
  - or
  - the depreciated cost, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Licensors may decide to take over; and
    - (b) the berths, if such berths are found to be in good and working condition, normal wear and tear excepted, as determined by the Expert.
- (ii) less dues outstanding, if any, to the Licensors by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,
- (iv) less amounts owed by the Licensee to the Licensors on account of any damage caused by the Licensee, as per the provisions of this Agreement
- (v) add any amounts owed by the Licensors to the Licensee on account of any damage caused by the Licensors, as per the provisions of this Agreement.

#### **13.6.5 Default by the Licensee after the Date of Commercial Operation**

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If the Termination Order is issued by the Licensor on account of default of the Licensee after the Date of Commercial Operation, the amount of compensation payable to the Lenders, if any, shall be as under:

The aggregate of, as at the Date of Taking Over,

- (i) Lowest of the following:
  - the value, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Licensor may decide to take over; and
    - (b) the berths, if such berths are found to be in good and working condition, normal wear and tear excepted, as determined by the Expert.
  - or
  - the depreciated cost, as determined by the Expert, of
    - (a) the tangible assets other than the berths in the Terminal and which the Licensor may decide to take over; and
    - (b) the berths, if such berths are found to be in good and working condition, normal wear and tear excepted, as determined by the Expert.
  - or
  - the total outstanding liability of the Licensee to the Lenders as per the Financing Documents.
- (ii) less dues outstanding, if any, to the Licensor by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,
- (iv) less amounts owed by the Licensee to the Licensor on account of any damage caused by the Licensee, as per the provisions of this Agreement
- (v) add any amounts owed by the Licensor to the Licensee on account of any damage caused by the Licensor, as per the provisions of this Agreement.

#### **13.6.6 Termination due to Determination**

If the termination order is issued by the Licensor for termination due to Determination under the provisions of this Agreement, the amount of compensation payable to the Licensee shall be as under:

the aggregate of, as on the date of expiry of the Notice of Determination,

- (i) the total loans and paid-up equity capital utilised towards the Project and as determined by the Expert,
- (ii) less dues outstanding, if any, to the Licensor by the Licensee under the provisions of this Agreement,
- (iii) less amount(s), if any, receivable by Licensee as insurance proceeds,

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- (iv) less amounts owed by the Licensee to the Licensor on account of any damage caused by the Licensee, as per the provisions of this Agreement
  - (v) add any amounts owed by the Licensor to the Licensee on account of any damage caused by the Licensor, as per the provisions of this Agreement.

### **13.7 Assumptions underlying computation of Compensation**

For purpose of computation of Compensation under Articles 13.6.1 to 13.6.5, the depreciated cost of the assets shall be calculated as follows:

- (a) The depreciation for the following assets shall be calculated on straight line basis. Life span of the assets for the purpose of depreciation shall be as indicated hereunder.

Civil RCC structures	50 years
Buildings Operational	40 years
Fenders attached to the berths	10 years
Cranes with all attachments and accessories	18 years
Railway wagon loading equipment	15 years

- (b) The depreciation for all other standing equipment and assets of the Licensee shall be based on the "Written Down Value" as worked out according to the provisions of Income-Tax Act, 1961, prevalent on the date of termination of the Licence.

### **13.8 Remedies Cumulative**

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

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# VI DISPUTE RESOLUTION

## 16.1 Settlement by Chief Engineer / Chairman

In the absence of any kind of dispute arising between the Licensor and the Licensee in connection with or arising out of the contract for carrying out of the works (whether during the progress of the works or after termination or assignment of or breach of the contract) it shall in the first place be referred to be decided by the Chief Engineer who within a period of 60 days after being requested by the Licensee, shall give written notice of his decision to the Licensor. If the Chief Engineer fails to give notice of his decision as aforesaid within a period of 60 days after being requested by the Licensee as aforesaid or if the Licensee is dissatisfied with any such decision, then and in any such case, the Licensee shall, within a further period of 60 days from the expiry of the 60 days or from the date of receipt of the Chief Engineer's decision, write to the Chairman putting forth his views, why he is not in agreement with the decision given by the Chief Engineer. If the Licensee after receipt of the decision of the Chief Engineer does not refer the dispute to the Chairman, the decision of the Chief Engineer shall be final and binding upon the Licensee and no further claim will exist thereon.

The Chairman shall, within a period of 60 days from the receipt of the notice from the Licensee, give written notice of his final decision in the matter referred to the Licensee. If the Licensee fails to give written notice of his decision within a period of 60 days after being requested by the Licensee as aforesaid, then the Licensee or its authorized agent shall, within a period of 60 days from the date of his application to the Chairman or within a period of 60 days after receipt of notice of his decision, refer the dispute to the Chairman for arbitration. If the Chairman has given written notice of his final decision to the Licensee and the Licensee is not satisfied with the decision, then the Licensee shall, within a period of 60 days from the receipt of the decision of the Chairman, refer the dispute to the Chairman for arbitration. If the Licensee fails to refer the dispute to the Chairman for arbitration within a period of 60 days from the receipt of the decision of the Chairman, then the decision of the Chairman shall be final and binding upon the Licensee and no further claim will exist thereon.

The Licensee shall, within a period of 60 days from the receipt of the decision of the Chairman, refer the dispute to the Chairman for arbitration. If the Licensee fails to refer the dispute to the Chairman for arbitration within a period of 60 days from the receipt of the decision of the Chairman, then the decision of the Chairman shall be final and binding upon the Licensee and no further claim will exist thereon.



**14.1 Settlement by Chief Engineer / Chairman**

If any disputes or difference of any kind whatsoever arises between the Licensor and the Licensee in connection with or arising out of the contract for carrying out of the works (whether during the progress of the works, after termination, abandonment of or breach of the contract) it shall in the first place be referred to and settled by the Chief Engineer who within a period of 60 days, after being requested by the Licensee, shall give written notice of his decision to the Licensee. If the Chief Engineer fails to give notice of his decision as aforesaid within a period of 60 days after being requested by the Licensee as aforesaid or if the Licensee be dissatisfied with any such decision, then and in any such case, the Licensee shall, within a further period of 30 days from the expiry of the 60 days or from the date of receipt of the Chief Engineer's decision write to the Chairman putting forth his views, why he is not in agreement with the decision given by the Chief Engineer. If the Licensee after receiving notice of the decision of the Chief Engineer, does not refer the dispute to the Chairman, seeking his decision within a period of 30 days of the Chief Engineer's decision, then the Chief Engineer's decision will be final and binding upon the Licensee, and no further claim will exist thereto.

The Chairman, shall within a period of 60 days from the receipt of the request from the Licensee, give written notice of his final decision in the matter under dispute to the Licensee. If the Chairman fails to give written notice of his final decision, within a period of 60 days, after being requested by the Licensee, as aforesaid, or if the Licensee be dis-satisfied with any such final decision given, then the Licensee may within a period of 30 days after the expiry of the period of 60 days from the date of his application to the Chairman or within a period of 30 days after receiving notice of such final decision, as the case may be, require that the matter or matters in dispute, be referred to arbitration as herein after provided. If the Chairman has given written notice of his final decision to the Licensee and no claim to arbitration has been communicated to the Chairman by the Licensee, within a period of 30 days, from the receipt of the Chairman's decision, then the decision of the Chairman shall remain final and binding upon the Licensee. If the Chairman fails to give written notice of his final decision to the Licensee within a period of 60 days, and no claim to the arbitration has been communicated to the Chairman or the Chief Engineer by the Licensee within a period of 30 days thereafter, then the decision given by the Chief Engineer shall remain final and binding upon the Licensee.

Save as hereinafter provided, such decision in respect of every matter as referred shall be final and binding upon the Licensee, until the completion of the work and shall forthwith be given effect to by the Licensee, who shall proceed with the work with all the diligence whether he requires arbitration as hereinafter provided or not.

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## 14.2 Arbitration

All disputes or differences in respect of which the decision, if any, of the Chief Engineer or the Chairman has not become final and binding as aforesaid shall be referred to an arbitrator who shall be a Member of Indian Council of Arbitrators, to be appointed by the Chairman pursuant to and so as with regard to the mode and consequence of the reference and in all other respects to conform to the provision of the Arbitration and Conciliation Act, 1996 or any re-enactment or statutory modification thereof for the time being in force. The Sole Arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certificate or valuation of the Chief Engineer or the Chairman and neither party, shall be limited in the proceedings before the Arbitration to the evidence or arguments put before the Chief Engineer, or the Chairman, for the purpose of obtaining his said decision. No decision given by either the Chief Engineer or the Chairman in accordance with the foregoing provisions shall disqualify them from being called as a witness and given evidence before the Sole Arbitrator as aforesaid.

The Sole Arbitrator shall not enter on the reference until after the completion or the alleged completion of works, unless with the written consent of the Licensor and the Licensee.

In the event, the Arbitrator to whom the matter is originally referred, is unable to act for any reason, the Chairman shall appoint another sole Arbitrator who shall be a Member of Indian Council of Arbitrators as Arbitrator and he shall be entitled to proceed with the reference afresh or from the stage at which it was left by his predecessor.

In all cases, the Arbitrator shall give a reasoned award.

### 14.2.1 *Language of Arbitration*

The arbitration proceedings shall be conducted in the English language.

### 14.2.2 *Place of Arbitration*

The arbitration shall take place in Goa, India or such other place in India as may be decided by the Licensor.

### 14.2.3 *Arbitration Expenses*

The expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs

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and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

#### **14.2.4 Performance during Arbitration**

Pending the submission of and/or decision on a dispute, difference or claim or during the pendency of the arbitration 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 an award.

Any cause of action which may have occurred in favor of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the License Period or early Termination 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 expiration of the License Period or early Termination, as the case may be, shall survive the expiration or early Termination.

#### **15.2 Joint Responsibility**

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

#### **15.3 Several Obligations**

The duties, obligations and liabilities of the Parties under this Agreement, are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties. Each Party shall be liable individually and severally for its own obligations and liabilities under this Agreement.

#### **15.4 Separability**

If for any reason whatsoever any provision or any part of this Agreement is held or shall be declared or be void or illegal or invalid, under present or future laws or regulations effective and applicable during the License Period, the entire Agreement shall nevertheless remain in full force and effect and the remaining provisions of this Agreement shall continue to be binding on the Parties and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.



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## **15 MISCELLANEOUS PROVISIONS**

### **15.1 Survival of Obligations**

Any cause or 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 Licence Period or early Termination 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 expiration of the Licence Period or early Termination as the case may be shall survive the expiration or early Termination.

### **15.2 Joint Responsibility**

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

### **15.3 Several Obligations**

The duties, obligations and liabilities of the Parties under this Agreement are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties. Each Party shall be liable individually and severally for its own obligations and liabilities under this Agreement.

### **15.4 Separability**

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 Licence Period, by any competent arbitral tribunal or court, such provisions shall be fully separable and this Licence 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 Licence 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.

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## 15.5 Supplementary Agreements

The Licensor may call upon the Licensee to enter into Supplementary Agreements as considered necessary by the Licensor from time to time in respect of any matters not provided for in the Agreement, and the Licensee shall co-operate in this regard.

## 15.6 Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and by respective authorised signatories only and shall be given by hand delivery, courier, registered acknowledgement post and delivered or transmitted to the Parties at their respective addresses set forth below:

The Licensor:        **Mormugao Port Trust**  
                             **Headland, Sada - 403804**  
                             **Goa**

Attention:        **Chief Engineer**

The Licensee:        **ABG Goa Port Private Limited**  
                             **C/o. M/s. Hiralal & Co.**  
                             **Thakker House**  
                             **Swatantra Peth**  
                             **Vasco-da-gama**  
                             **Goa - 403 802**

Attention:        **Terminal Manager**

or such other person or address as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered in the case of any communication made by letter, when delivered by hand, by recognised courier or by mail (registered, return receipt requested) at that address.

## 15.7 Non-Waiver

No waiver of any term or condition or breach of this Agreement shall be valid except by an instrument in writing expressly waiving such term or condition or breach signed by the waiving Party. Unless otherwise specifically provided in writing a waiver by any Party of any term or condition or breach of this Agreement in a given case shall not be deemed or construed as a general waiver of such term or condition in the future.

---

**15.8 Governing Law**

The Licence shall be interpreted and have effect in accordance with the Law of India and no suit or other proceeding relating to this contract shall be filed or taken by the Licensee in any Court of Law, except in Court of competent jurisdiction in Goa.

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of India.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorised representatives on the dates indicated next to their signatures below:

**Mormugao Port Trust  
Common Seal**

**Witness 1**

**Dr. Jose Paul  
Chairman  
Mormugao Port Trust  
Date**

**Date**

**Witness 2**

**Date**

**ABG Goa Port Private Limited  
Common Seal**

**Witness 1**

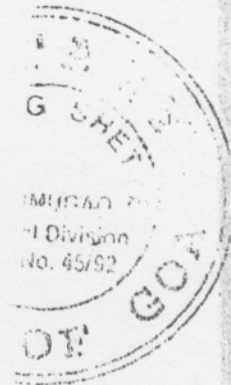
**Saket Agarwal  
Director  
ABG Goa Port Private Limited  
Date**

**Date**

**Witness 2**

**Date**





# Appendix - I

## Letter of Intent



मुरगांव पोर्ट ट्रस्ट

**MORMUGAO PORT TRUST**

मुख्य प्रशासनिक कार्यालय

Main Administrative Head Office

मुरगांव हारबर-गोवा-403 803

Mormugao Harbour-Goa-403 803.

दिनांक :

Date : 7<sup>th</sup> July, 1997

CE/WKS-418 A/2376

LETTER OF INTENT

By Regd A/D

M/s. ABG Heavy Industries Ltd.,  
Bhupati Chambers,  
5th Floor,  
13, Mathew Road,  
MUMBAI 400 004.

Dear Sirs,

Sub:- Construction and Operation of two  
Multipurpose Bulk Cargo Berths (5A & 6A)  
at Mormugao Port on BOOT basis.

With reference to your offer for the subject tender, Mormugao Port Trust is pleased to issue this Letter of Intent for the award of Licence to you for construction and operation of two Multipurpose Bulk Cargo Berths (5A & 6A) and also for the provision of high capacity items of handling equipment for handling of coal and other general and dry bulk cargo at the Mormugao Port for a period of 30 years on 'Build, Own, Operate and Transfer' basis. This Letter of Intent is issued further in accordance with the terms and conditions of the bid document, your offer no. ABG/PSB/721/96 dated 27.1.96 and further amendments to the conditions conveyed to you vide our letter no. CE/WKS-418A/9504 dated 7.2.96 and CE/WKS-418A/9898 dated 20.2.96 and other correspondence exchanged between the Mormugao Port Trust and M/s. ABG Heavy Industries Ltd. on the subject as detailed below:

....2/-

हमेशा हिंदी में पत्राचार करें और देश का गौरव बढाएं ।



दूरभाष सं. / Tel. Nos. ईपीएबीएस एक्सचेंज / EPABX Exc. एमआरएच सं. / MRH No. 512911-16, 512177-79,  
512891-93, 513700-09, टेलिग्राफिक कोड / Telex HR. 0191-219 वास्को / VSG 0191-256 फैक्स / FAX : (0834) 513065, 51272  
टेलिग्राफिक कोड हारबडमिन मुरगांव / Telegraphic Code : HARBADMIN MORMUGAO  
पोर्ट स्टोर्स-वास्को PORTSTORES-VASCO.

- i) Our tender for the subject work.
- ii) Your offer No. ABG/PSB/721/96 dated 27/1/96
- iii) Our letter No.CE/WKS-418A/9504 dated 7/2/96
- iv) Your letter No.ABG/PSB/778/96 dated 14/2/96
- v) Your letter No.ABG/PSB/779/96 dated 14/2/96
- vi) Our letter No.CE/WKS-418A/9776 dated 14/2/96
- vii) Your revised price offer No. ABG/PSB/791/96 dated 20/2/96
- viii) Our letter No.CE/WKS-418A/9898 dated 20/2/96
- ix) Your letter No.ABG/PSB/MOFT/001 dated 20/2/96
- x) Our letter No.CE/WKS-418A/10022 dated 24/2/96
- xi) Our letter No.CE/WKS-418A/10813 dated 23/3/96
- xii) Your letter No.ABG/PSB/018/96 dated 1/4/96
- xiii) Our letter No.CE/WKS-418A/8067 dated 13/2/97
- xiv) Your letter No. MPT/GR/445/220 dated 17/2/97
- xv) Our letter No.CE/WKS-418A/8456 dated 26/2/97
- xvi) Your letter No. ABG/SDDG/764/97 dated 27/2/97
- xvii) Our Letter of Intent No. CE/WKS-418A/2376 dated 7/7/97

2. All the construction work including installation and commissioning of cargo handling equipment should be completed within a period of 30 months from the date of signing the Agreement.

3. The licence fee for the first year shall be paid within 30 days from the date of signing of the Agreement. The licence fee from the second year onwards shall be paid in advance one month before the commencement of the year for which the amount is due.

The Licence period includes construction and commissioning of the berths and which will be for a period of 30 years from the date of signing of the Agreement. After expiry of the licence period of 30 years, the assets created over the said period will revert to Mormugao Port Trust in good working condition without payment of any compensation whatsoever.

5. You are requested to submit details of your tie-ups with other companies/firms as mentioned in your letter No.ABG/PSB/721/96 dated 27/1/96.

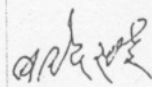
6. You will be required to sign the Licence Agreement with the Board of Trustees of the Mormugao Port Trust, within one month of the date of issue of this Letter of Intent.



7. This Letter of Intent, is subject to finalisation of the Agreement with adequate safeguards built in the contract to ensure Port's interests. You are, therefore, requested to depute your representative to Mormugao for discussions and finalisation of the Draft Agreement as intimated to you vide our letter no.CE/WKS-419A/1741 dated 10.6.97.

8. Please acknowledge receipt of this letter.

Yours faithfully,



Chief Engineer



Appendix - II

Certificate of Incorporation  
of  
ABG Goa Port Pvt. Ltd.





सत्यमेव जयते

प्रारूप. आई. आर.

Form I R.

निगमन का प्रमाण-पत्र

# CERTIFICATE OF INCORPORATION

ता. .... का सं. ....  
No. 24-02369 ..... of 19 97 .....

मैं एतद्वारा प्रमाणित करता हूँ कि आज .....

कम्पनी अधिनियम, 1956 (1956 का 1) के अधीन निगमित की गई है और यह कम्पनी परिसीमित है।

I hereby certify that AEG GOA PORT PRIVATE LIMITED

\*\*\*\*\*  
\*\*\*\*\*

is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the Company is limited.

मेरे हस्ताक्षर से आज ता. .... को दिया गया।

Given under my hand at PANAJI  
this TWENTY SIXTH ..... day of JUNE ..... One thousand nine  
hundred and ninety SEVEN .....

( 5 ASHADA, SAKA - 1919 )



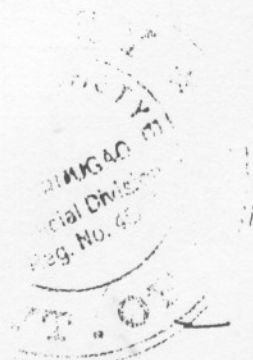
*R. V. Dani*  
(R. V. Dani)  
कम्पनियों का रजिस्ट्रार  
Registrar of Companies  
GOA, DAMAN & DIU





## Appendix - III

Undertaking of  
ABG Heavy Industries Ltd.



# ABG

ABG/R1/2598

6<sup>th</sup> March, 1999

To,  
The Chief Engineer,  
Mormugao Port Trust,  
Headland, Sada

Dear Sir,

Sub: Construction and Operation of two Multipurpose Bulk  
Cargo Berths 5A & 6A on 'BOOT' basis

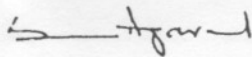
This has reference to your letter No.CE/WKS-418/A/10762 dated  
6/3/99.

As advised by you we are enclosing herewith the undertaking in the  
format as enclosed along with your above referred letter.

Yours faithfully,

For ABG Heavy Industries Ltd.

Encl: As above.



SAKET AGARWAL  
MANAGING DIRECTOR

06.03.99



ABG Heavy Industries Ltd.



## UNDERTAKING

We, ABG Heavy Industries Ltd., a company incorporated and registered under the Companies Act, 1956 having our registered office at 5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Bombay 400 004, hereinafter referred to as ABG (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and assigns) state as follows:

WHEREAS in the year 1996 we had submitted a bid to the Board of Trustees of the Mormugao Port (the Trustees) for construction of two multipurpose Bulk Cargo Berth with all the facilities and equipment (5A & 6A) at the port of Mormugao on Build Own Operate and Transfer basis.

AND WHEREAS the Trustees after evaluating all the bids received by them accepted our bid and decided to award the licence to us, vide their Letter of Intent dated July 7<sup>th</sup>, 1997.

AND WHEREAS we promoted a company known as ABG Goa Port Pvt. Ltd. which is incorporated and registered under the Companies Act, 1956 at Vasco Da Gama hereinafter called ABG GOA (which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns). Presently all of the issued capital of ABG GOA is held by us and presently it is our wholly owned subsidiary.

AND WHEREAS the Trustees have agreed to grant licence and execute the licence agreement in the name of the said ABG GOA instead of us, subject to our furnishing this undertaking to ensure that, at all times during the Licence Period, we shall have substantial control over the said ABG GOA.

### NOW THIS INDENTURE WITNESSETH AND WE SAY AS FOLLOWS:-

1. We confirm that presently ABG Goa Port Pvt. Ltd. is our wholly owned subsidiary.
2. Subject to what is stated hereinafter if at any time we desire to reduce our share holding in ABG Goa Port Pvt. Ltd., hereinafter referred to as the said ABG GOA (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and assigns), the said reduction shall be made in favour of such person/s as suggested by us and with prior approval of the Board of Trustees of the Mormugao Port, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include their successors or assigns), in writing and upon such terms and conditions as may be approved by

ABG Heavy Industries Ltd.



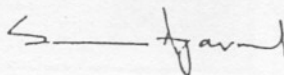


# ABG

the said Trustees, provided however that such approval shall not be unreasonably withheld.

3. Prior to making "Public Offer" of equity shares in ABG GOA we shall obtain the prior written consent of the said Trustees, which consent shall not be unreasonably withheld.
4. We shall continue to hold minimum share holding of 26% of the issued and paid up equity share capital of the said ABG GOA for a minimum period of 10 years from the Date of Commercial Operation as defined in the Licence Agreement. Provided however that, at all times during the Licence Period as defined in the Licence Agreement, we shall hold not less than 10% (ten) of the issued and paid up equity share capital of the said ABG GOA.
5. We further agree and undertake that in the event the said Trustees granting necessary permission to reduce our shareholding or reduce our share holding below 26% in favour of any person/persons as suggested by us as stated above, the percentage of issued and paid up equity share capital held by us shall at no point of time be less than the percentage of issued and paid up equity share capital held by such person/persons.
6. In order to meet its capital requirement in the event of the said ABG GOA issuing further share capital, we agree and undertake to subscribe to such additional share capital so as to ensure that our shareholding shall be equal to and not less than the shareholding of any person/persons as stated above during the entire Licence Period as defined in the Licence Agreement.
7. It is clarified that Clauses 5 and 6 shall not apply for the persons of the General Public in case of Public Offer of shares by ABG GOA.

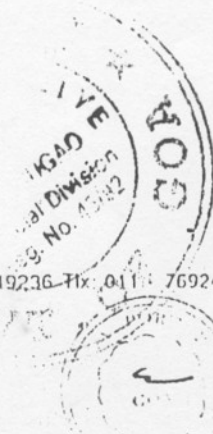
FOR M/s ABG Heavy Industries Ltd.



06.03.99

SAKET AGARWAL  
MANAGING DIRECTOR

ABG Heavy Industries Ltd.



## Appendix - IV

Letter of MOPT permission  
for allowing ABG Goa Port  
Pvt. Ltd. to enter into  
Agreement.





संदर्भ सं. : CE/WKS/418A/11118  
Ref. No.: \_\_\_\_\_



मुरगांव पत्तन न्यास  
MORMUGAO PORT TRUST,  
प्रशासनिक कार्यालय  
ADMINISTRATIVE OFFICE  
हेडलैण्ड, सडा, गोवा - ४०३८०४  
HEADLAND SADA, GOA - 403804  
दिनांक 17/03/1999.  
Date : \_\_\_\_\_

M/s. ABG Heavy Industries Ltd.,  
5<sup>th</sup> floor, Bhupati Chambers,  
13, Mathew Road,  
MUMBAI 400 004.

Dear Sirs,

Kind atten. Mr Saket Agarwal.

Sub: Construction and Operation of Two Multipurpose  
Bulk Cargo Berths (5A&6A) at Mormugao Port  
on BOOT basis.

In furtherance to our letter No.CE/WKS-418\A\6797 dt. 29<sup>th</sup> Oct.,98, we would like to inform you that the Monthly Royalty Payment clause No.7.3.4.3 and Exclusivity Rights clause No.9.5 in the License Agreement have been re-examined. Accordingly, necessary modifications were carried out & with the approval of our Board of Trustees the modified clauses were sent to Ministry of Surface Transport for sanction of the Govt.

... 2/-

हमेशा हिन्दी में पत्राचार करें और देश का गौरव बढ़ाएं ।

दूरभाष सं. / Tel. Nos. दीपीएसीएसएस एक्सचेंज / EPABX Exc. : (0834) 512911-16, 512177-79, 512772, 512891-93, 513700-09,  
फैक्स / Fax : (0834) 513065, 512721  
टेलिग्राफिक कोड : हारबाडमिन मुरगांव / Telegraphic Code : HARBADMIN MORMUGAO, पोर्ट स्टोर्स-वासको PORTSTORES-VASCO.

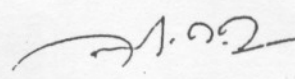




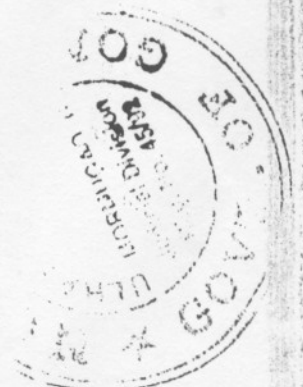
We are pleased to inform you that the Government has now accorded the sanction to the modified clauses under Major Port Trusts Act, 1963. Thereafter, consequent changes have been incorporated in the License Agreement. A copy of the revised final License Agreement to be signed between Mormugao Port Trust and M/s ABG Goa Port Pvt. Ltd., Goa is enclosed for your reference.

You are requested to concur with the final modified draft agreement, complete all formalities at your end and come forward to sign the Agreement, on the subject project at a convenient date, preferably before 31<sup>st</sup> March, 1999.

Yours faithfully,

  
✓ CHIEF ENGINEER

Encl: As above.



# Appendix - V

## Licensed Premises



MOLE 269-67

450m

F ALONGSIDE BERTH TO BE DREDGED TO -13.5M

OIL BERTH

BERTH 8  
- 12m

AREA LEASED TO  
WESTERN INDIA SHIPYARD LTD.

BERTHING SPACE  
NON CARGO VESSELS

PROPOSED

TPL SKB  
GNA

MMTC

STOCK PILE

TPL SKB  
GNA

EXTENSION

STOCKPILE AREA

BREAKWATER

NEW GATE

ADMINISTRATIVE  
OFFICE  
JETTY CHAWL

5A

6A

E

T3

ICE'S OFFICE

FUTURE DUAL LANE  
MAIN PORT ROAD

FORT

CHURCH

FIRE STATION

STEAMER  
MPT 63

ADMINISTRATIVE  
OFFICE  
DLB OFFICE

MUSEUM

GUESTHOUSE  
MPT 1

PRIMARY  
SCHOOL

AUDITORIUM

SECONDARY  
SCHOOL

PLAY  
FIELD

CHOWGULE OFFICE





# Appendix - VI

## Information about Licensed Premises



## LOCATION OF THE LICENSED PREMISES:

The Port of Mormugao is situated on India's western sea-board in the latitude 15° 25' North and longitude 73° 47' east. It is 370 Kms south of Bombay and 575 Kms north of Cochin. Mormugao is an open type natural harbour.

The location of the Licensed Premises is in the old dock area in front of berths nos. 4 (Part), 5 & 6. The proposed Multipurpose Bulk Cargo Berths 5A & 6A are to be constructed in the sea about 131 metres in front of the existing face of the quay wall and in line with the existing berths nos. 8 & 9. The total length of the two berths will be 450 metres dredged to -13.50 M.

## SITE CONDITIONS:

### Tidal Variation :

The main tidal variation at Mormugao is of the order of 1.6 metres at spring tides and around 0.7 metres at neap tides. The maximum height of tide is 2.5 metres.

The following tide levels refer to Chart Datum which is 4.84 metres below the principal bench mark situated between the two wings of CME's office building at Jetty. The bench mark is 3.60 metres above I.M.S.L. (Indian Mean Sea Level).

i)	Lower low water springs near Solastices	0.00	metres
ii)	Mean lower low water	+ 0.37	"
iii)	Mean higher low water	+ 1.05	"
iv)	Mean Sea level	+ 1.30	"
v)	Mean lower high water	+ 1.78	"
vi)	Mean Higher high water	+ 2.06	"
vii)	Higher high water springs near Solastices	+ 2.30	"

The above information is based on Hydrographic Chart no.2020. The observations were recorded in 1969 - 70.

B.M. on Btland no.16-A  
+4.5884  
on 13 +4.50



## Prevailing Winds - Speed, Direction & Frequency

The mean wind speed varies from 2 on the Beaufort Scale in November to 4 in July, the annual mean wind speed being 13.6 Kmph. In an average year, there are 316 days with winds varying from 0 to 3 on the Beaufort Scale and 48 days with winds scaling 4 to 7 on the Beaufort Scale and 1 calm day.

The predominant wind direction changes with the time of the year. During the period June - September, wind blows from the west and the South - west. During the remaining period, the wind direction is from the NE, ESE during the evening. The highest average wind speed is in the range of 30 Kms per hour recorded in July 1965. The highest speed is 105 Kms per hour recorded in June 1994. Winds of force more than 10 on the Beaufort Scale are not expected.

## Sea Swell and Currents

### In Open sea:

In fair season in the open sea, wave heights are almost always under 2 M. Very rarely are they in the range of 2 to 3M, direction of the waves being from West, North West and North. In the monsoon season, the waves are mainly from West and South West. About 25% of the observation indicates waves of between 2 to 3M. Currents in the area are generally less than one knot.

### Within sheltered Harbour

Mormugao Harbour is sheltered from the waves by the Mormugao Headland and the existing breakwater.

### Influence of Monsoon

The South - West monsoon is the main rainy season. 80% of the rain falls during the months of June, July and August. The average rainfall is about 2500 mm per year.

### Temperature and Relative Humidity

The location of Mormugao is such that there is little variation in temperature and it has constantly high humidity. The maximum temperature vary from about 28° C in January to 32° C in May and the minimum temperatures vary from about 21° C in January to 28° C in May. The mean percentage relative humidity is about 83% for the year. It is about 92% during August and September and 75% in December.





### Visibility

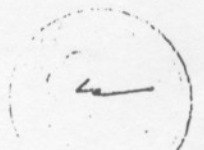
Except to some extent in the monsoon months, the visibility conditions are excellent at Mormugao Harbour. There may be 3 to 4 days in a year with visibility less than 4 K.m.

### Cyclones:

Mormugao is not situated in a pronounced cyclonic zone and the number of occasions it was visited by cyclones during the past 75 years is less than a dozen.

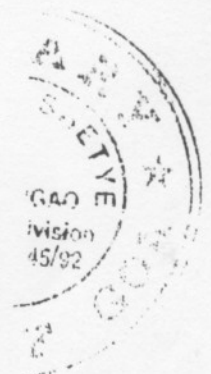
### Borehole and wave study details

According to the available borehole details, it is seen that strata below the dredging as well as reclamation area generally varies from soft to medium silty clay or sand.



# Appendix - VII

## Design Standards



## DESIGN ASPECTS

### GOETETHNICAL CONSIDERATIONS

As per the details of the bore holes at Berth No. 4, the layer at the sea bed is soft grey clay and gravelly calyey sand layer, below which weathered rock is found. At the bore hole No. 1 by Cemindia which falls at the stockpile area, shows soft clay layer of 3.80 meter and a stiff clay layer with gravel underneath, by a silty clay with fine sand and gravel. Thus the filling for stockpile area is bound to settle for about 1.5 meter to achieve 90% consolidation. This settlement will be taking for years to achieve 90% consolidation. To achieve quicker consolidation necessary draining system to be provided.

As an alternative for filling for backup area with red soil, dredged material may be used. Since there is no sufficient quantity of the dredged material, it is better to dispose off all the dredged material to avoid two types of equipment for dredging. The cost of backup area filling from borrow pits will be slightly higher than by reclaiming by dredging.





## BERTH DESIGN ASPECTS

The location of the new berth is at distance of about 130 meters from the existing Berth No. 5 & 6 towards channel, and the breakwater / mole extension is not envisaged, there will be increase in wave effect. Thus the structure is to be designed such that the wave energy is decipated properly. A bund with murrum with armour cover at the sea side is proposed to retain earth filling for the stockpile area. The slope of the bund is proposed to be 1:1.5 to 1:2. The rock armour will help in decipating the wave energy over the slope of the bund.

The berth will be of pile foundation with suspended deck. The piles are of 1.2m in diameter, at the main berth and of 1.0m at the backup area. The berth will be of suitable panel lengths to cater for the thermal expansions, by providing necessary expansion joints. Over the piles there will be main and cross beams with a suspended deck. The first two rows of piles are at closer interval to catter for the crane wheel load. The first bent of the beams will have service trenches for cable and water lines. At fender location the piles will be in group of 3 in Nos. and 1.0m in diameter.

V type fenders will be provided in horizontal directions on the fender walls at regular intervals. Galvanised service ladders will be provided at all the fender walls. 100 Tonne capacity cast iron bollards will be provided at the appropriate locations.



## STRUCTURAL DESIGN CRITERIA

### LOADINGS

#### A) MAIN STRUCTURE

The main structure will be designed for following loading conditions :

- Dead load (self weight of the structure)
- Live load

Live load considered is of ship unloader, a UDL of 5T/sqmtr, Class AA loading of IRC - 6 at the berth and 5T/sqmtr at other locations.

- Berthing Forces

The berth is designed for a vessel of size 60000 DWT. The vessel is assumed to berth at a velocity of 0.15m/sec at an angle of 10 degree to the berth which works out to 166T to normal direction of the quay wall and 50T in longitudinal direction.

- Bollard Pull.

Bollard pull of 100T is considered along the berth or 45° with a vertical angle of 0° to 30°.

- Wind load

Wind velocity of 80 KMPH is considered.

- Seismic load as per IS 1893. 50% of the live load along with the dead load shall be assumed to act on the entire berth at the time of earthquake.

- Wave force of height 1.5 meter and wave period of 12 seconds is considered.

- Temperature forces for a variation of 15° and modulus of elasticity is 3.6 x 10 Kg/ sqcm.

Combination of the above forces are considered and for a force which is maximum among the combination the structures will be designed.



## MATERIAL SPECIFICATION

### CONCRETE

- All aggregates used will be confirming to IS 383.
- Cement will be grade 43 as per IS 269 for concrete grade M25 and grade 53 for concrete grade above M25.
- Grade of concrete are conforming to IS 456.

Beams and Slabs	-	M40
Piles	-	M25
Pile Caps	-	M25
Screed Concrete	-	M25

### COVER TO CONCRETE

-	Submerged Structures	-	75 MM
-	Beams : Soffits & Sides	-	75 MM
	Top	-	50 MM
-	Slab : Soffits & Sides	-	50 MM
	Top	-	40 MM

### REINFORCEMENT

- Mild steel conforming to IS 432
- HYSD Bars conforming to IS 1786

### METHODOLOGY OF DESIGN

Foundation : Piles will be designed by working stress method (elastic design). Fixity of the piles will be considered 3m below the dredged depth with a dredging tolerance of 0.3m. (i.e. 13.3 m)

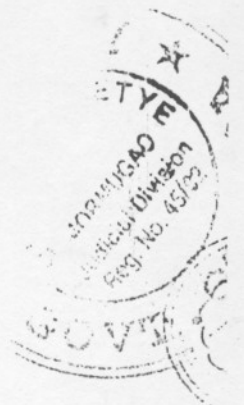
Superstructure : The superstructure will be designed based on limit state collapse and serviceability as per IS 4651, Part I, Part IV.



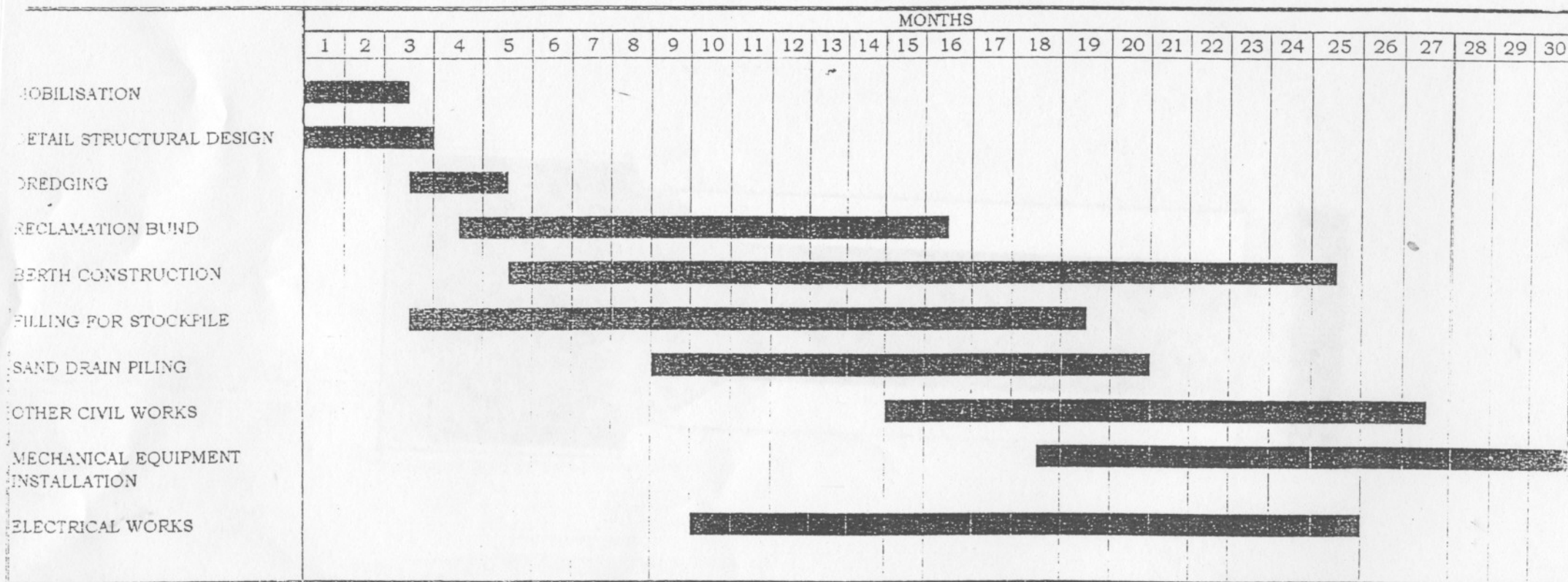


# Appendix- VIII

## Schedule of Construction and Development



**PROGRAMME FOR CONSTRUCTION OF TWO MULTIPURPOSE BULK CARGO BERTHS (5A & 6A) AT MOPT**



## Appendix - IX

List of Core Assets to be  
handed over by the  
Licensee





**LIST OF CORE ASSETS TO BE HANDED OVER BY THE LICENSEE**

1. **Ship to store handling equipment, installed on the berths, comprising :**

Rail mounted Quayside Gantry Crane(s) for loading/unloading operations, and/or Rail mounted Electric level luffing wharf crane(s) for loading/unloading operations.

2. **Railway wagon loading equipment, installed inside the terminal comprising :**

Railway wagon loading hopper(s) with chutes and discharge mechanism.

