

**CONCESSION AGREEMENT**

**BETWEEN**

**COCHIN PORT TRUST**

**AND**

**INDIAN OIL CORPORATION LIMITED**

**FOR**

**CONSTRUCTION, OPERATION AND MAINTENANCE OF A  
MULTI-USER LIQUID TERMINAL AT PUTHUVYPEEN SEZ  
AT COCHIN PORT**

**DATED 4<sup>th</sup> April 2014**



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AG 849263

THIS CONCESSION AGREEMENT is made at Kochi on this the 4<sup>th</sup> day of April 2014

BETWEEN:

**BOARD OF TRUSTEES FOR COCHIN PORT**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Willingdon Island, Cochin – 682 009, hereinafter referred to as “**CoPT**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

**INDIAN OIL CORPORATION LIMITED**, a company registered under the Companies Act, 1956, and having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai 400 051 hereinafter referred to as “**IOCL**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

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RS 100/-

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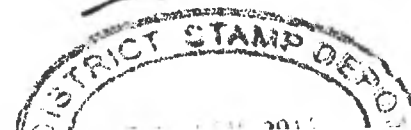
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*[Signature]*

4 2014

IOCL.

Per. *[Signature]* Vignar



WHEREAS, IOCL and CoPT are desirous of entering into a Concession Agreement by incorporating all the agreed terms and conditions as set out in this agreement for “Development of a Multi-User Liquid Terminal (MULT) at Puthuvypeen SEZ” at Cochin Port under the ownership of IOCL and usage, maintenance and transfer of the same by IOCL.

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

A handwritten signature, possibly of a representative of IOCL, consisting of a vertical line with a horizontal stroke at the bottom and a small loop on the left.

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A handwritten signature, possibly of a representative of CoPT, featuring a large, stylized 'O' followed by a series of loops and a long horizontal stroke at the bottom.

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

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

**“Actual Project Cost”** means the actual cost of the Project borne by both IOCL and CoPT as per the terms and conditions laid down in this agreement.

**“Additional Cost”** means the additional expenditure which both IOCL and CoPT would be required to incur and which has arisen as a result of Change in Law or change in design / scope of Project as mutually agreed in writing.

**“Agreement”** means this agreement as of date hereof, including Appendices 1 through 6 as may be amended, supplemented or modified in accordance with the provisions hereof.

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

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

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

**“Assets Created by IOCL”** means the capital facilities created by IOCL during the Concession Period as per the Project Requirements in this Agreement.

**“Board”** means the Board of Trustees for the Port of Cochin.

**“Book Value”** means the aggregate written down value as on the date of issue of the Termination Notice in the books of IOCL of:

- (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by IOCL and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by CoPT; and





- (ii) the moveable assets including cargo handling equipment belonging to IOCL, which CoPT agrees to take over;

in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 2013, as applicable from time to time.

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

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

**“Completion Certificate”** shall have the meaning assigned to it under Article 6.7.

**“Common Facilities and Services”** shall include all works/facilities and services at the Project Site, except those meant exclusively either for LPG or for Non-LPG cargo handling, as set out under Appendix 3 (Project Requirements) that are required to be provided by IOCL during the Concession Period, in accordance with this Agreement.

**“Concession”** means the Concession granted by CoPT to IOCL in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

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

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

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

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

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

**“Construction Standards”** means the construction standards as applicable for the Project in line with national and international standards and as laid down in statutory provisions.

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

**“Contractor”** means a Person with whom IOCL and/or CoPT has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services, including the Management Contractor other than CoPT.

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

**“Date of Agreement”** means the date of signing of this agreement between CoPT and IOCL.

**“Date of Commercial Operation”** means the date on which the facility is ready for commercial operation after creation of berthing facilities and IOCL installs LPG handling

facility with all operational devices and obtain all statutory permissions/licenses/clearances to handle LPG in the facility so created by IOCL in accordance with the provisions of this Agreement/ MPT Act.

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

**“Designs and Drawings”** means the designs and drawings and other technical information pertaining to the Project.

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

**“EPC Contract(s) / Contract(s)”** means the contract(s) entered into by IOCL and /or COPT with one or more Contractors interalia for the purpose of design, engineering, procurement of equipment and materials (including by import thereof) and construction of the Project in accordance with the provisions of this Agreement.

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

**“Estimated Project Cost”** means the sum of Rs. 170 crores (Rupees One hundred and seventy crores only) as per Appendix 2, being the estimated cost of the Project excluding the LPG Handling Facilities & Services (which are to be provided, operated and maintained solely by IOCL or its Management Contractor). as estimated by CoPT excluding the cost of the following items, which are also to be borne by IOCL:

- (a) Works associated with providing power and water at the Project Site including standby power; and
- (b) All attendant works necessary for ISPS compliance and other statutory clearances and permissions.

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

**“Exclusivity Period”** shall have the meaning ascribed to it in Article 12.2(b).

**“Expert”** means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, mutually agreed and appointed by IOCL and CoPT.

**“FEED Consultant”** means M/s. L&T Ramboll Consulting Engineers Ltd., Chennai, with whom CoPT has entered into a contract (viz., Agt. No. 12 of 2013-'14) for “Preparation of FEED document for Development of Multi-User Liquid Terminal in Cochin Port”.

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

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

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

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

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

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

**“Insurance Cover”** shall have the meaning ascribed to it in Article 12.3 (a).

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

**“LPG”** means commercial propane or commercial butane or mixture thereof.

**“LPG Handling Capacity of the Project”** means 1.6 MMTPA.

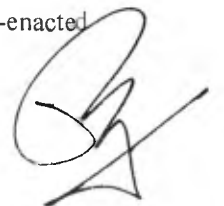
**“LPG Handling Facilities & Services”** means the facilities and services as set out under the Project Requirements, to be provided, operated and maintained solely by IOCL for handling of LPG during the Concession Period in accordance with this Agreement.

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

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

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

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



**“Non-LPG Handling Facilities & Services”** means the facilities and services to be provided, operated and maintained by CoPT at the MULT Project Site for handling Non-LPG Cargo in accordance with this Agreement.

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

**“O&M Contract / Management Contract”** means the contract, if any, entered into by IOCL and/or CoPT for the operation and maintenance of the Project in accordance with the provisions of this Agreement.

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

**“Operations and Maintenance Standards”** means the minimum standards of operations and maintenance as per Good Industry Practice with regard to the Project Facilities and Services.

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

**“Party”** means either CoPT or IOCL as the context may require or admit and **“Parties”** means both CoPT and IOCL.

**“Performance Standards”** means the minimum standards of performance as per Good Industry Practice with regard to the Project Facilities and Services.

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

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

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

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

**“Project Contracts”** means collectively this Agreement, the EPC Contract, O&M Contract/Management Contract and any other contract entered into or may hereafter be entered into by IOCL in connection with planning, construction, maintenance and operation of the Project and Project Facilities and Services.

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

**“Project Requirements”** means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facilities and Services set out in Appendix 3.

**“Project Schedule”** means the Appendix 4 hereto.

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

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

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

**“Safety Standards”** means the minimum standards of safety as per statutory regulations and Good Industry Practice with regard to the Project/Project Facilities and Services.

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

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

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

**“Tariff”** means the applicable rate(s) as per Scale of Rates that may be charged by CoPT.

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

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

**“The Port”** means Cochin Port.

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

**“Working Days”** means any day on which the banks are normally open for business at Cochin.

## 1.2. Other References

In this Agreement:

**“CISF”** means Central Industrial Security Force.

**“m”** means Metre, the unit of length.

**“MMTPA”** means Million Metric Tonnes Per Annum, the unit of weight.

**“MULT”** means Multi - User Liquid Terminal at Puthuvypeen.

**“PESO”** means Petroleum and Explosives Safety Organisation.

**“VAT”** means Value Added Tax.

**“ISPS”** means International Ship and Port facility Security.

### 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.

In this Agreement unless the context otherwise requires:

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

license or other document as amended, varied, supplemented, modified or novated at the time of such reference;

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

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

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

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

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

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



## ARTICLE 2

### CONCESSION AND PROJECT SITE

#### 2.1 Concession

In consideration of IOCL agreeing to perform its obligations as set out in this Agreement, CoPT hereby grants to IOCL, subject to the provisions of this Agreement, an exclusive licence for designing, engineering, financing, constructing, equipping, owning, operating maintaining and replacing the Project Facilities and Services.

#### 2.2 Concession Period

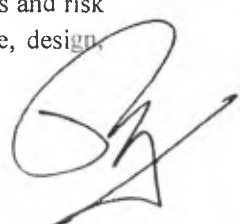
The Concession hereby granted is for a period of 30 (thirty) years commencing from the Date of Award of Concession during which period IOCL is authorized to operate the Project Facilities and Services related to LPG handling in accordance with the provisions hereof.

Provided that: -

- a) in the event of the Concession being extended by CoPT beyond the said period of 30 (thirty) years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended.
- b) in the event of an early termination/determination of the Concession / this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/determination of the Concession/this Agreement.
- c) As per the present Land Policy Guidelines of the Ministry of Shipping, such projects are permitted only for a period of 30 years. However, considering that IOCL are a PSU, they will be permitted renewal for a further period of 30 years on mutually agreed terms and conditions subject to the then prevailing Land Policy Guidelines and the approval of the Ministry of Shipping or any such competent authority from time to time empowered for granting such extension.

#### 2.3 Acceptance of the Concession

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





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

#### **2.4 Project Site**

- a) In consideration of IOCL agreeing to perform and discharge its obligations as set forth in this Agreement, CoPT hereby grants to IOCL, the exclusive right (not exclusive as against CoPT or its Contractors) to enter upon, occupy and use the Project Site for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.
- b) IOCL shall at its costs, charges and expenses make such development and improvements in the Project Site as may be necessary or appropriate for implementing the Project and providing the Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

#### **2.5 Use of Project Site**

IOCL shall not without the prior written consent or approval of CoPT, use the Project Site for any purpose other than for the purposes of the Project/the Project Facilities and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by CoPT.

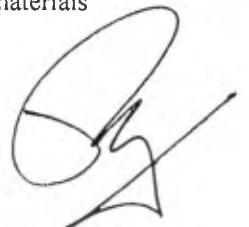
#### **2.6 Information about Project Site**

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

#### **2.7 Acceptance of the Project Site**

IOCL accepts possession of the Project Site on 'as is where is' basis and confirms having:

- a) inspected the Project Site including its surroundings;
- b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site, the nature of the ground and subsoil, the form and nature of the Project Site and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and



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

## **2.8 Peaceful Occupation**

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



## ARTICLE 3

### CONDITIONS PRECEDENT

#### 3.1 Conditions Precedent

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

(a) The following Conditions Precedent shall be satisfied by IOCL:

- (i) Furnishing of the relevant documents evidencing authorization given to the officer for signing this Agreement;
- (ii) Reimbursement of the expenditure incurred by CoPT towards obtaining Environmental Clearance, carrying out all investigations/model studies, upon production of necessary documentation;
- (iii) Reimbursement of 45% of the expenditure incurred by CoPT for “Preparation of FEED Document for Development of Multi-User Liquid Terminal in Cochin Port”, upon production of necessary documentation; and
- (iv) Obtaining all Applicable Permits including Environmental Clearance from MoE&F as may be required for commencement of Construction Works as set out in Appendix 5.

(b) The following Condition Precedent shall be satisfied by CoPT:

- (i) Furnishing of the relevant documents evidencing authorization given to the officer for signing this Agreement;
- (ii) Handing over physical, undisputed and vacant possession of the Project Site for the purposes of the Project; and
- (iii) Issue of Work Order to the EPC Contractor on behalf of IOCL for the construction of MULT jetty and associated facilities.

3.2 The aforesaid Conditions Precedent shall be complied with within 1 (one) year of the Date of Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by CoPT at any time in its sole discretion. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by IOCL at any time in its sole discretion. Notwithstanding anything mentioned hereinabove, if either of the Parties fails to perform the Conditions Precedent, both IOCL and CoPT shall mutually discuss and agree for setting new timelines for its completion.



- 3.4 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.3, both the Parties shall mutually discuss and decide the further course of action to be taken for the Project.

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**ARTICLE 4**  
**PERFORMANCE GUARANTEE**

INTENTIONALLY OMITTED

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**ARTICLE 5**  
**INDEPENDENT ENGINEER**

INTENTIONALLY OMITTED

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**ARTICLE 6**  
**PROJECT IMPLEMENTATION**

**6.1 Scope of the Project**

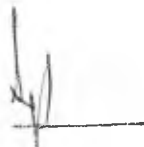
Scope of the Project during the Construction Phase includes all activities specifically within the purview of providing the **Project Facilities & Services** (viz., construction of MULT jetty and associated facilities) as per requirements finalized through detailed engineering and design. This includes but is not limited to:

**(1) Common Facilities & Services comprising of:**

- (i) Construction of a jetty capable of handling vessels of size ranging from 10,000 DWT to a maximum of 80,000 DWT, LOA- 100m to 230m, beam – 21m to 37 m, draft -13m. The jetty structure shall invariably contain a service platform with provision for 8 nos. unloading arms (2 for LPG and 6 for Non-LPG), 4 nos. berthing dolphins, 4 nos. mooring dolphins, walkways connecting mooring and /berthing dolphins / service platform, an approach trestle for single lane traffic along with pipeline trestle for 10 nos. pipelines including all required fixtures such as fenders, bollards, mooring hooks and / or winches, shore protection works, etc. ;
- (ii) Construction of a 3 storied building suitable for housing fire water pumps, sea water cooling pumps, offices, control tower etc.; and also IOCL's control room, substation, DG room, HSD storage area, utility air compressor, heat exchangers, etc. including providing water supply and electrification arrangements in the building;
- (iii) Capital dredging of the jetty basin to ensure 13 metres draft;
- (iv) Construction of an access road to the jetty from the main road;
- (v) Installation of the unloading arms for LPG and fire fighting equipments necessary for handling LPG and non-LPG Cargo;
- (vi) Power and water installations including as required for operating various equipments and facilities for LPG tanker unloading operation and as necessary for the jetty, and peripheral road, surface drainage works, compound wall, etc.;
- (vii) Works associated with providing power and water at the Project Site including standby power;
- (viii) All attendant works necessary for ISPS compliance and other statutory clearances and permissions;

**and**

- (2) LPG Handling Facilities & Services** to be provided, operated and maintained solely by IOCL or its Management Contractor.



## **6.2 Preparation of Designs and Drawings**

CoPT shall, at the cost, charges and expenses of IOCL, prepare the Designs and Drawings relating to Common Facilities and Services in conformity with the Project Requirements through the EPC Contractor engaged by CoPT on behalf of IOCL. Preparation of Designs and Drawings of LPG Handling Facilities & Services (viz., LPG unloading arms and related safety and control systems) shall be done by IOCL.

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

On behalf of IOCL, CoPT shall arrange the review of Designs and Drawings relating to Common Facilities and Services prepared by the EPC Contractor(s) engaged by CoPT through the FEED Consultant.

## **6.4 Construction Phase**

- a) On behalf of IOCL, CoPT shall take up the work for construction of jetty and other associated facilities (Common Facilities & Services) through the EPC Contractor(s) in accordance with the requirements jointly agreed by CoPT and IOCL. This construction work shall be supervised by CoPT. The timelines for planning and execution of the Project shall be as provided in Appendix 4.
- b) In the meantime, IOCL shall plan the procurement and installation of LPG Handling Facilities & Services including unloading facilities and other instrumentations required for handling LPG and also provide the same at the Project Site, at its cost and responsibility.
- c) The required prioritisation of the facilities for taking up the works simultaneously shall be decided mutually by CoPT and IOCL during Construction Phase.

## **6.5 Obligations of IOCL**

Without prejudice to the generality of Articles 6.3 & 6.4 above and in addition to any of its other obligations under this Agreement, during the Construction Phase, **IOCL shall:**

- a) arrange for and make available, in a timely manner all necessary financial and other resources required for construction and installation of the Common Facilities and Services, as specified in this Agreement;
- b) arrange prompt payments to all the Contractors engaged by CoPT for the Project on behalf of IOCL, as and when CoPT furnishes the certified bills/invoices indicating the deductions, if any;

- c) arrange to pay promptly to CoPT: (i) any payments to be made by CoPT towards carrying out further investigations/model studies, if any suggested by the FEED Consultant; (ii) 45% of all the payments to be made to the FEED Consultant other than that covered by Article 3.1 (a) (iii); and (iii) the Supervision Charges towards the Project at the rate of 3.15% of the payments released to the Contractors, as per the schedule set forth in Appendix 6. It is understood that monies released by IOCL to CoPT shall be subject to adjustment upon final settlement with the Contractors/Consultants. In no event shall the Supervision Charges be in excess of 3.15 % of the gross payments made to the Contractors/Consultants engaged for investigations/model studies [less Service Tax];
- d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits as specified in the Appendix 5;
- e) arrange for construction and installation of the LPG Handling Facilities and Services;
- f) engage professionally competent Persons for project management and construction and ensure that all works related to LPG Handling Facilities and Services are carried out in compliance with the Construction Standards;
- g) promptly commence and complete the works related to LPG Handling Facilities & Services including the installation of the equipment in accordance with the Project Schedule; and
- h) upon completion of construction works, obtain a Completion Certificate from CoPT.

## 6.6 Obligations of CoPT

6.6.1 In addition to any of its other obligations under this Agreement, during the Construction Phase, CoPT shall, on behalf of IOCL, supervise the work of construction of Common Facilities & Services executed through EPC Contractor(s), in accordance with the requirements jointly agreed with, by CoPT and IOCL, subject to the following conditions:

- (i) CoPT shall ensure that the following mutually agreed clauses are included in each tender invited by CoPT for works under the Scope of this Project:
  - (a) Price Reduction for Delayed Completion by Contractor;
  - (b) Dispute Resolution Mechanism; and
  - (c) Other terms and conditions as per IOCL's advice.
- (ii) The timelines for planning and execution of the Project shall be as provided in Appendix 4. In case, IOCL have fulfilled all its obligations but the execution of the EPC Contract for the construction of MULT jetty and associated facilities is not



completed within the scheduled 21 Months from the date of issue of Work Order to the EPC Contractor, CoPT shall extend the Concession Period by a period equal to the period of delay.

- (iii) CoPT shall, after satisfying themselves about execution of works as per Contract, certify the bill/invoice submitted by the Contractors engaged by CoPT for the Project on behalf of IOCL and furnish it to IOCL within the period prescribed in the respective Contracts [such period being not less than 15 (fifteen) Days] and IOCL shall promptly release the payment directly to the Contractors against such works. Such bills / invoices shall be forwarded by CoPT to IOCL in lots, preferably not exceeding twice a month.
- (iv) CoPT shall certify the amount to be deducted from all the Contractors engaged by CoPT for the Project on behalf of IOCL, in each invoice as applicable, towards the price reduction for delay or on any other account as per the Contract conditions and IOCL shall release payments after effecting such deductions.
- (v) In case any dispute arises in the Contract, the matter will be resolved as per the dispute resolution mechanism prescribed in the Contract. In case of any payment/recoveries in respect of the award of the dispute, the same will be to the account of IOCL to the extent applicable to the Scope of the Project and the balance, if any, will be on CoPT's account.

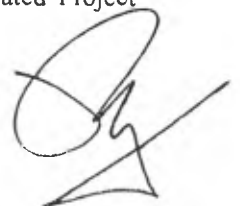
6.6.2 Cost of fire fighting facilities required solely for Non-LPG Handling Facilities and Services shall be financed by CoPT.

#### **6.7 Issue of Completion Certificate and Customs Declaration**

Upon completion of Construction Works, CoPT shall forthwith issue a Completion Certificate and also promptly arrange to obtain approval of the competent authority, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act.

#### **6.8 Change of Scope**

- (a) CoPT may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement due to technical and/or statutory requirements ("Change of Scope"). Provided, the aggregate cost of implementing all additional works and services constituting Change of Scope shall not exceed a sum corresponding to 10% (ten percent) of the Estimated Project Cost;



- (b) If CoPT/IOCL determines that a Change of Scope is necessary, both Parties shall mutually decide to implement the same based on the merit of the case. The additional cost, if any, in implementing the above shall be: (i) borne by IOCL if it is an exclusive requirement for LPG handling; (ii) borne by CoPT if it is an exclusive requirement for Non-LPG handling; and (iii) shared by IOCL and CoPT in the ratio of 45:55, if it is a requirement for the Common Facilities and Services under the Project Facilities and Services.

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

**7.1 (a) Obligations of IOCL**

In addition to any of its other obligations under this Agreement, IOCL shall manage, operate, maintain and repair the LPG Handling Facilities and Services, in accordance with the provisions of this Agreement. IOCL's obligations under this Article 7.1 shall include but shall not be limited to the following:

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

IOCL shall:

- a) promptly commence operations upon the Project Facilities and Services being declared by CoPT as ready for operations;
- b) make efforts to maximise the cargo handled so as to achieve optimal utilization of the LPG Handling Facilities and Services;
- c) ensure compliance of the LPG Handling Facilities and Services with the Project and Statutory Requirements including obtaining, maintaining and complying with Applicable Permits and complying with Applicable Laws;
- d) ensure that the LPG Handling Facilities and Services adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions;
- e) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of CoPT and/or other agencies;
- f) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the LPG Handling Facilities and Services, in a timely manner;
- g) make available financial resources for operation, maintenance, repair and replacement of the Common Facilities and Services at the rate of 45% of the actual cost incurred by CoPT for that purpose, in a timely manner, as detailed under Article 9. Provided that the cost of manning of Common Facilities is in line with those of similar Major Ports and provided that the final adjustment of costs are based on documents certified by a mutually appointed auditor.

- h) ensure maintenance of proper and accurate record/data/accounts relating to operations of the LPG Handling Facilities and Services;
- (i) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the LPG Handling Facilities and Services, all services which CoPT is authorized to perform, undertake or provide under the provisions of the MPT Act.

**(ii) Repairs and Maintenance**

IOCL shall at its own cost:

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

**(iii) Replacement of Equipment**

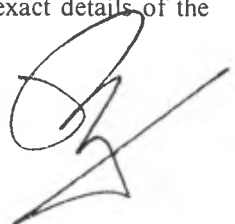
IOCL shall, at its cost, plan for replacement of the equipment before the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the LPG Handling Facilities and Services commensurate with the Project Requirements, at all times during the Concession Period.

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

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

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

Except as provided/authorized under this Agreement, IOCL shall not, without the prior written intimation to CoPT, remove or replace any assets comprised in the LPG Handling Facilities and Services. Such notice shall contain the exact details of the



assets that IOCL intends to remove and/or replace, its reasons for doing so and the likely period for replacement.

**(vi) Payments to CoPT**

IOCL shall make/ensure payments to CoPT as per Article 9.

**(vii) Access for Inspection**

IOCL shall be obliged to extend all co-operation to Experts appointed by CoPT for purposes of verifying that the LPG Handling Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made as and when required. Additionally, IOCL shall upon prior intimation by CoPT, provide the authorized representatives of CoPT, access to the LPG Handling Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement.

**(viii) Safety Audits**

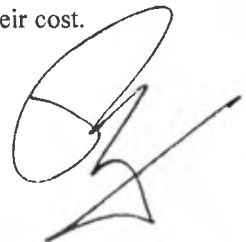
IOCL shall undertake safety audit of LPG Handling Facilities on annual basis for verifying that the LPG Handling Facilities and Services are in strict compliance with the Safety Standards and shall also share the findings with CoPT.

**(ix) Reports**

IOCL shall provide to CoPT, Monthly reports on LPG cargo traffic, unit gross output/ discharge rates at berth, and effective working time and waiting time, within 15 (fifteen) Days following the end of each Month

**(x) Security Arrangements**

CoPT shall, at IOCL's cost, make arrangements for perimeter and water front security including access control in the Project Site/Project Facilities for complying with the provisions of the ISPS Code and such other requirements of International Maritime Organization as may be applicable to India from time to time. The operating cost as applicable on account of the MULT shall be shared to the extent of 45% by IOCL and the rest by CoPT. IOCL shall make prompt payments for the same from time to time. If any additional security is warranted for LPG Handling Facilities, the same shall be arranged by IOCL independently at their cost.



**(xi) Employment of Personnel**

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

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

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

**(b) Rights of IOCL**

**Preferential and Priority Berthing**

IOCL shall have preferential or priority berthing subject to the Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any.



**(c) Obligations of CoPT**

In addition to any of its other obligations under this Agreement, CoPT shall manage, operate, maintain and repair the Common Facilities and Services, in accordance with the provisions of this Agreement. CoPT's obligations under this Article 7.1 shall include but shall not be limited to the following:

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

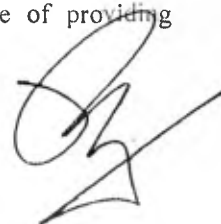
CoPT shall:

- (a) promptly commence operations and maintenance of the Common Facilities and Services required for the Project being declared by CoPT as ready for operations;
- (b) ensure compliance of the Common Facilities and Services with the Project and Statutory Requirements and other relevant standards;
- (c) ensure that the Common Facilities and Services adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic under normal operating conditions;
- (d) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Common Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of CoPT or other agencies; and
- (e) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Common Facilities and Services in a timely manner.

**(ii) Repairs and Maintenance**

CoPT shall, subject to the provisions contained in sub article (v) hereunder:

- (a) repair as necessary and maintain the Common Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine and preventive repairs and maintenance of the Common Facilities and Services including repair and refurbish equipments; and
- (b) maintain the Common Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards.



**(iii) Replacement of Equipment**

CoPT shall, subject to the provisions contained in sub article (v), plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that Common Facilities and Services are commensurate with the Project Requirements, at all times during the Concession Period.

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

CoPT shall, subject to the provisions contained in sub article (v), promptly and diligently repair, replace or restore any of the Common Facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever.

**(v) Cost Sharing**

The cost for items of works covered by sub articles (i) to (iv) hereinabove shall be shared by IOCL and CoPT in the ratio 45:55. Provided that, the cost of manning of Common Facilities is in line with those of similar Major Ports and provided that, the final adjustment of costs are based on documents certified by a mutually appointed auditor.

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

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

**(vii) Security Arrangements**

CoPT shall, at IOCL's cost, make arrangements for perimeter and water front security including access control in the Project Site/Project Facilities for complying with the provisions of the ISPS Code and such other requirements of International Maritime Organization as may be applicable to India from time to time. The operating cost as applicable on account of the MULT shall be shared to the extent of 45% by IOCL and the rest by CoPT.

**(viii) Marine and Port Services**

CoPT shall provide/ cause to be provided, to IOCL, the following services:

- (a) scheduling the entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms and the sailing



schedule as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;

- (b) maintenance of the entrance channel draft at 13.0 m;
- (c) waterside safety and safety of navigation;
- (d) maintenance of the dredged draft alongside the berth at 13.0 m subject to the condition that the cost and expenses for the same shall be shared by IOCL and CoPT in the ratio 45:55;
- (e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;
- (f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services; and
- (g) assist IOCL in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site.

**(ix) Approvals**

CoPT shall promptly grant approvals/ consents sought by IOCL as required under this Agreement subject to IOCL having complied with all Applicable Laws/requirements in this regard.

**(x) In addition to any of its other obligations in this Agreement, CoPT shall arrange:**

- a) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;
- b) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;



- c) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which CoPT is authorized to perform, undertake or provide under the provisions of the MPT Act; and
- d) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(d) **Rights of CoPT**

CoPT shall be entitled to use the Common Facilities and Services for "204 days" in a year for handling Non-LPG Cargo for which purpose CoPT may install additional handling facilities and collect Vessel Related, Cargo Related and other charges fixed / introduced by Govt. / TAMP or such other competent authority from time to time, from the users. In addition, in case IOCL does not use all the "161 days" allotted to IOCL for handling LPG Cargo, CoPT will be at liberty to use the facilities for handling Non-LPG Cargo during such unutilised periods.

**7.2 Utilities and Services**

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

- (a) the power made available shall be as received by CoPT from Kerala State Electricity Board. The take off point for electricity shall be from the sub station near the Project Site;
- (b) the potable and service water made available shall be as received by CoPT from Kerala Water Authority. The take off point for water shall be the nearest available water line;
- (c) IOCL shall, at its cost, and to the satisfaction of CoPT, install meters to measure the consumption of power and water. CoPT does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;
- (d) IOCL may, at its cost, make alternative arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any.



## ARTICLE 8

### TARIFF

#### 8.1. Levy and Recovery of the Tariff

- 8.1.1 Subject to the provisions under Article 9.2 of this Agreement, IOCL shall be entitled to recover Tariff from the users of the LPG Handling Facilities and Services as per the Tariff Notification by TAMP or such other competent authority from time to time. CoPT shall be entitled to recover Tariff from the users of Non-LPG Handling Facilities and Services as per the Tariff Notification by TAMP or such other competent authority from time to time.
- 8.1.2 IOCL hereby acknowledges and agrees that it is not entitled to any revision of Tariff or other relief from CoPT or any Government Instrumentality, except in accordance with the express provisions of Agreement. IOCL further acknowledges and hereby accepts the risk of inadequacy, mistakes or error of facts, assumptions or projections in the Tariff Notification issued by TAMP or such other competent authority from time to time in this regard and agrees that CoPT shall not be liable for the same in any manner whatsoever to IOCL. However, CoPT agrees to support IOCL in case of inadequacy, mistakes or error of facts, assumptions or projections in the Tariff Notification issued by TAMP or such other competent authority from time to time in this regard.
- 8.1.3. Subject to the provisions under Article 9.2 of this Agreement, IOCL shall have an exclusive right (not exclusive as against CoPT) to recover cost towards the Project Facilities and Services from other parties by way of charges for use of the Project Facilities and Services and other incidental charges for LPG handling as per tariff specified by TAMP or any such other competent authority from time to time .

#### 8.2. Collection of Charges

IOCL shall be entitled to collect all charges fixed by TAMP or such other competent authority from time to time, from the users of LPG Handling Facilities and Services. Similarly, CoPT shall be entitled to collect all charges fixed by TAMP or such other competent authority from time to time, from the users of Non- LPG Handling Facilities and Services.



## ARTICLE 9

### PAYMENTS TO CoPT

#### 9.1. License Fee

IOCL shall, as consideration for the use, in its capacity as a bare licensee of the Project Site made available in accordance with Article 2.4, pay to CoPT, a Licence Fee at the rate of Re. 1 (Rupee One only) per sq.m. per annum. In addition, if any land area is allotted to IOCL for their exclusive use during the currency of this Agreement, Licence Fee as per the SOR prevailing from time to time, shall also be payable by IOCL.

#### 9.2. Wharfage/Berth Hire/Port Dues/Pilotage / other charges

IOCL may use the MULT berth for a maximum period of "161 days" in a Financial Year for handling LPG only for which Wharfage shall be payable at a token rate of Re.1 per tonne.

In case of LPG vessels occupying the berth beyond "161 days", Wharfage and other charges fixed / notified by Govt. / TAMP or such other competent authority from time to time, shall be payable on the quantity of LPG handled during the excess period, which will accrue to CoPT.

"161 days" of MULT availability means 3864 hours ( $161 \times 24 = 3864$ ). However, after discounting for days of non availability of MULT due to maintenance activities and other factors, "161 days" of MULT shall be construed as 2704.8 hrs of Berth occupancy by LPG vessels (70% of "161 days" i.e.,  $0.70 \times 24 \times 161 = 2704.8$  hours).

The hours of berth utilization of IOCL's vessels shall be reckoned from the time of berthing of the vessel to the time of unberthing. Ship's waiting time at the berth for want of favourable tide conditions, conditions of inclement weather and due to reasons attributable to Port (lack of night navigation, period of delay in reporting of the pilot for vessel cast off beyond the requested time for unberthing etc.) shall be excluded from calculation of berth utilization time.

Vessel Related Charges payable to CoPT shall be as follows:

- a) Berth Hire Charges as per the Scale of Rates prevailing from time to time in case IOCL's usage exceeds "161 days" in a year or effectively 2704.80 hours;
- b) Port Dues and Pilotage as per the Scale of Rates prevailing from time to time; and



- c) Any other charges / levy introduced by Govt. / TAMP or such other competent authority from time to time during the currency of this Agreement.

### **9.3 Reimbursement of O&M Costs**

IOCL shall, on demand by CoPT, not later than 15 (fifteen) Working Days of receipt of demand notice issued by CoPT, reimburse 45 % of the expenses incurred by CoPT for the operation and maintenance of the Common Facilities & Services, on a Quarterly basis, provided that the same is accompanied by all the required supporting documents.

### **9.4 Payment for Dredging Charges**

IOCL shall bear 45% of the actual cost incurred for maintaining the MULT jetty basin at the required levels. The payment shall be made on Monthly basis, against the Debit Note raised by CoPT supported by the bill raised by the Contractor. The payment shall be made by IOCL within 15 (fifteen) Working Days of receipt of Debit Note by IOCL. The payment shall be subject to adjustments based on actual cost incurred during a year.

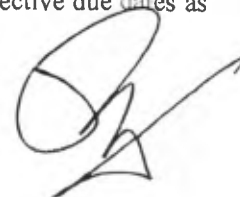
### **9.5 Other Payments**

IOCL shall also be liable to make the following payments to CoPT as per the claims raised by the CoPT, in connection with the Project:

- (i) payments to be made by CoPT: (a) towards carrying out further investigations / model studies; and (b) to the FEED Consultant other than that covered by Article 3.1 (a) (iii), as detailed in Article 6.5 of this Agreement;
- (ii) payments towards Supervision Charges as detailed in Article 6.5 (c) of this Agreement;
- (iii) payments towards making security arrangements, as detailed elsewhere in this Agreement;
- (iv) payments towards way leave charges as prescribed in the Scale of Rates of CoPT prevailing from time to time, for drawing LPG, power and water lines to the Project Site; and
- (v) payments towards Utilities and Services such as power and water availed solely for LPG Handling Facilities & Services.

### **9.6 Mode of Payment**

All payments under this Agreement shall be made by RTGS/NEFT/electronic mode, within 15 (Fifteen) Working Days of issuing demand notice by the CoPT/ respective due dates as per this Agreement.



**9.7. Interest for Delayed Payments**

Any amounts remaining unpaid beyond 15 Working Days from due dates would carry interest @ SBI BR plus 2% (two percent) per annum.

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## ARTICLE 10

### ASSETS: OWNERSHIP AND PERMITTED CHARGE

#### 10.1 Ownership of Assets

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

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

##### (b) Assets created or provided by IOCL

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by IOCL at the Project Site pursuant to this Agreement shall, until expiry of this Agreement or transfer to CoPT on Termination in accordance with this Agreement, be with IOCL. However, such ownership of buildings etc. erected by IOCL at the Project Site shall not be construed as and shall not confer any rights in the Project Site (land and water areas) upon IOCL, save as that of a bare licensee as provided for in this Agreement.

IOCL will have ownership over the facility so constructed for the duration of the Concession Period after which the entire facility shall vest with CoPT.



**ARTICLE 11**

**SHAREHOLDING**

INTENTIONALLY OMITTED

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## ARTICLE 12

### GENERAL RIGHTS, DUTIES AND OBLIGATIONS

#### 12.1 Of IOCL

##### (a) Applicable Permits

IOCL shall at all times during the Agreement Period, maintain and comply with the Applicable Permits as applicable to the LPG Handling Facilities and Services.

##### (b) Taxes & duties

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

##### (c) Assignability

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

Provided further nothing contained in this Article shall absolve IOCL from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement.

##### (d) Engagement of Contractors

IOCL hereby engage CoPT as the Management Contractor thereby entrusting CoPT with the responsibilities of operating and managing the Common Facilities and Services.

CoPT may engage any Person(s) possessing the requisite skill, expertise and capability for designing, engineering, procurement and construction of Civil/ Mechanical/ Electrical Engineering structures/equipment, and/or operation and maintenance of the Common Facilities and Services.



IOCL may engage a management contractor and execute a management contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the LPG Handling Facilities and Services.

Provided, IOCL & CoPT shall at all times be responsible for all their respective obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement.

**(e) Condition Survey**

IOCL agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted), IOCL shall, at its cost and expenses, take all necessary steps to put the facilities maintained by IOCL in good working condition (normal wear and tear excepted) well before the Transfer Date. In the event IOCL fails to comply with this provision, CoPT may itself cause the condition survey and inventory of the Project Facilities and Services to be conducted and remove any defect or deficiency. CoPT shall be promptly reimbursed by IOCL for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition(normal wear and tear excepted).

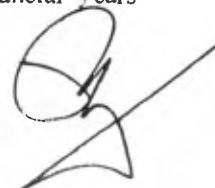
**12.2 Of CoPT**

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

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

**(b) Competing Facilities**

CoPT shall not operationalise any additional facilities within Port Limits for handling LPG either on its own or through any other Person until the earlier of: (i) 5 (five) years from the Date of Commissioning; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of LPG Handling Capacity of the Project for 2 (two) consecutive financial years



**(Exclusivity Period).** Provided that, throughout the Concession Period, no other agencies are allowed to create LPG handling facilities at the Project Facilities. However, any importer willing to import LPG may approach IOCL for use of spare available capacity of the Project's LPG Handling Facilities. The right of refusal or acceptance for such proposal shall vest solely with IOCL.

### 12.3 Of CoPT and IOCL

#### (a) Insurance

IOCL and CoPT shall jointly arrange to explore on continuous basis comprehensive insurance coverage for assets/facilities created for MULT throughout the Concession Period, subject to the following understanding:

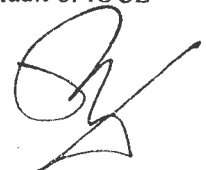
- (1) The insurance premium shall be shared in the ratio 45:55 between IOCL & CoPT; and
- (2) The compensation received from the Insurance Company will be directly remitted to the respective owner of the assets.

In the event the above arrangement is not feasible, insurance cover will be provided in the following pattern:

IOCL shall obtain adequate insurance cover for Project Facilities and Services and similarly CoPT shall obtain adequate insurance cover for Non-LPG Handling Facilities provided by CoPT.

#### (b) Indemnification

IOCL shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, CoPT, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to CoPT, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by IOCL or as a result of failure on the part of IOCL to perform any of its obligations under this Agreement or on IOCL committing breach of any of the terms and conditions of this Agreement or on the failure of IOCL to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of IOCL



or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with IOCL's use and occupation of the Project Site and/or construction, operation and maintenance of the Project Facilities and Services.

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

**(c) Compliance with Laws and Regulations**

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

**(d) Rights to Documents**

**(i) CoPT's Documents**

Documents and computer programs or copies thereof, if any, provided by CoPT to IOCL, shall always remain the property of CoPT. Such documents, computer programs and/or copies shall not be used by IOCL for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by CoPT, be returned by IOCL to CoPT on the Transfer Date.



**(ii) IOCL's Documents**

Documents and computer programs provided by IOCL, or which are developed (and owned by IOCL) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by IOCL to CoPT for use in respect of the MULT jetty free of cost on the Transfer Date. It is clarified that the intellectual property in such documents and computer programs shall not be transferred to CoPT.

**(e) Confidentiality**

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

**(f) Obligation to Cooperate**

The Parties shall extend all cooperation and assistance in order to comply with their respective obligations and achieve the objectives of this Agreement.

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## ARTICLE 13

### CHANGE IN LAW

#### 13.1 Change in Law

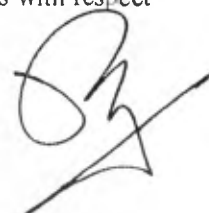
“Change in Law” means any of the following events which has a Material Adverse Effect:

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

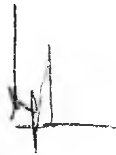
Provided any: (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised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

#### 13.2 Remedy

- (a) In the event of Change in Law, either Party may propose to the other Party for modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place IOCL/CoPT in substantially the same legal and financial position as it were prior to such Change in Law. Provided however that, if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.



- (b) In the alternative to the aforesaid, subject to IOCL/CoPT taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, IOCL/CoPT is obliged to incur Additional Cost, in the same proportion as their investments.
- (c) Upon occurrence of a Change in Law, either Party shall notify the other Party the following:
  - (i) the particulars, nature and the impact of Change in Law on the Project;
  - (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by IOCL/CoPT on account of the Change in Law; and
  - (iii) the measures, which IOCL/CoPT has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.
- (d) Upon receipt of the notice of Change in Law issued by either Party pursuant to the preceding sub-article(c), CoPT and IOCL shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert of the Additional Cost and determination of the quantum of the Additional Cost to be incurred.



## ARTICLE 14

### FORCE MAJEURE

#### 14.1 Force Majeure Event

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

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

#### 14.2 Non-Political Events

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

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



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

#### 14.3 Political Events

Any of the following events shall constitute Political Event:

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

#### 14.4 Other Events

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

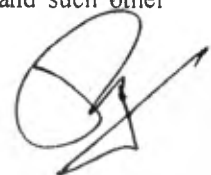
- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry wide or State/Nation wide strikes or industrial action;



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

#### 14.5 Notice of Force Majeure Event

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



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

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

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.8; or
- (b) termination of this Agreement pursuant to Article 14.10 hereof.

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

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

#### **14.8 Performance Excused**

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

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

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

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

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

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



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

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms.

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## ARTICLE 15

### EVENTS OF DEFAULT

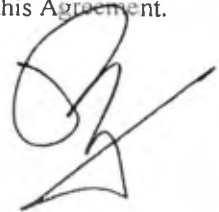
#### 15.1 Events of Default

Event of Default means IOCL Event of Default or CoPT Event of Default or both as the context may admit or require.

##### (a) IOCL Event of Default

IOCL Event of Default means any of the following events unless such an event has occurred as a consequence of CoPT Event of Default or a Force Majeure Event:

- (i) IOCL's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (ii) any representation made or warranties given by IOCL under this Agreement is found to be false or misleading;
- (iii) IOCL passing a resolution for voluntary winding up;
- (iv) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of IOCL by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings, which appointment is not vacated within a period of 120 (one hundred twenty) Days;
- (v) levy of an execution or distraint on IOCL's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days;
- (vi) amalgamation of IOCL with any other company or reconstruction or transfer of the whole or part of IOCL's undertaking other than transfer of assets in the ordinary course of business; and
- (vii) IOCL engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.



**(b) CoPT Event of Default**

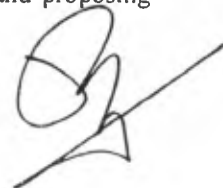
- (i) CoPT's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any IOCL Event of Default or a Force Majeure Event.
- (ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
- (iii) a default under the Management Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- (iv) any representation made or warranties given by CoPT under this Agreement is found to be false or misleading;
- (v) CoPT passing a resolution for voluntary winding up;
- (vi) levy of an execution or distraint on Project Site which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days;
- (vii) CoPT engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;
- (viii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Project Site in any legal proceedings initiated against CoPT (unless such proceedings are initiated as a consequence of any IOCL Event of Default); and
- (ix) levy of an execution or distraint on the Project Site in any proceedings against CoPT (unless such proceedings are initiated as a consequence of any IOCL Event of Default) which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days.

**15.2 Parties Rights**

Upon the occurrence of Event of Default (IOCL/ CoPT), Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms.

**15.3 Consultation Notice**

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing



consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default (“Consultation Notice”).

#### **15.4 Remedial Process**

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree (“**Remedial Period**”) the Parties shall endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

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

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

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

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

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

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



## ARTICLE 16

### TERMINATION OF THE CONCESSION/AGREEMENT

#### 16.1 Termination Procedure

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

#### 16.2 Obligations during Termination Period

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

#### 16.3 Condition Survey

- (a) The Parties agree that, on the service of a Termination Notice or at least 6 (six) Months prior to the expiry of the Concession Period as the case may be, they shall jointly conduct a condition survey of the Project Facilities and Services, through an approved valuer appointed with mutual consent, of the Project Site to ascertain the condition thereof and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of CoPT and IOCL shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by CoPT on the Transfer Date.
- (b) If, as a result of the condition survey, CoPT / IOCL shall observe/notice that the Project Site and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement by the respective Parties (normal wear and tear excepted) IOCL/CoPT as the case may be shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date.



- (c) In the event IOCL fails to comply with the provisions of this Agreement, CoPT may itself cause the condition survey of the Project Site and inventory of Project Facilities and Services to be conducted. CoPT shall be compensated by IOCL for any costs as may be incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

#### **16.4 Consequences of Termination**

Without prejudice to any other consequences or requirements under this Agreement or under any law, IOCL shall transfer all the Assets Created by IOCL and their rights in the Project Facilities and Services upon expiry of the Concession Period or non-renewal of Concession Period, by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18.



**ARTICLE 17**  
**COMPENSATION**

**17.1 Compensation**

**(a) On Expiry of Concession Period**

On the expiry of Concession Period by efflux of time, IOCL may be permitted renewal for a further period of 30 years on mutually agreed terms and conditions subject to the prevailing Land Policy Guidelines and the approval of the Ministry of Shipping or such other competent authority. In case renewal cannot be granted, or if the Parties desire to terminate the arrangement with mutual consent under circumstances other than those indicated in sub articles (b) to (d) hereunder, CoPT shall take over the Assets Created by IOCL from IOCL by paying Compensation on the basis of valuation by an approved valuer appointed with mutual consent but which shall not exceed the Actual Project Cost.

**(b) Termination due to CoPT Event of Default**

The compensation payable by CoPT to IOCL for the Assets Created by IOCL in the case of Termination due to **CoPT Event of Default** shall be on the basis of valuation by an approved valuer appointed with mutual consent but which shall not exceed the Actual Project Cost.

**(c) Termination due to IOCL Event of Default**

If the Termination is after the Date of Commercial Operation, due to a **IOCL Event of Default**, the compensation payable by CoPT to IOCL for the Assets Created by IOCL shall be the lower of:

- (i) the Book Value;
- (ii) the Actual Project Cost.

**(d) Termination due to Force Majeure Event**

- (i) If the Termination is due to a “Non-Political Event” or an “Other Event” as detailed in Articles 14.2 and 14.4, the compensation payable by CoPT to IOCL for the Assets Created by IOCL shall be the Book Value. Provided, no compensation shall be payable to the IOCL if IOCL fails to maintain Insurance Cover if contemplated under Article 12.3 of this Agreement; and



- (ii) If the Termination is due to a “Political Event” as detailed in Article 14.3, the compensation payable by CoPT to IOCL for the Assets Created by IOCL shall be the same as stipulated for Termination due to CoPT Event of Default under Article 17.1 (b).

## **17.2 Transfer Fee and Charges**

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

- (a) IOCL in the event of Termination due to a IOCL Event of Default; and
- (b) CoPT in any other situations.

## **17.3 Delayed Payment of Compensation**

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

## **17.4 Delayed Transfer of Assets Created by IOCL**

If for any reasons other than those attributable to CoPT, IOCL fails to transfer Assets Created by IOCL, rights and contracts on the Transfer Date in accordance with Article 16.4 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and IOCL shall, as a trustee of CoPT: (a) continue to operate and maintain the LPG Handling Facilities and Services or such of them, as directed by CoPT until completion of the relative transfer formalities; and (b) account for and pay to CoPT, the berth hire charges, wharfage and other charges at the rate applicable to LPG in respect of jetty utilization beyond “161 days” by IOCL, minus operating costs and statutory dues, from such operations of LPG Handling Facilities. Provided nothing contained in this Article 17.4 shall be deemed or construed to authorise delay in completion of formalities of transfer of Assets Created by IOCL, rights and contracts by IOCL to CoPT in accordance with the requirements thereof under this Agreement.

In case the transfer of Assets Created by IOCL, by IOCL to CoPT is delayed for reasons attributable to CoPT, IOCL at its discretion, may continue to operate the LPG Handling Facilities and Services at the terms and conditions of this Agreement.

#### **17.5 Remedies Cumulative**

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

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## ARTICLE 18

### TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

#### 18.1 General Scope of Transfer/Payment

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

#### 18.2 IOCL's Obligations

IOCL shall:

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



- (g) at its cost, remove within 90 (ninety) Days from the expiry of the Concession Period, from the Project Site, any moveable assets that are not taken over by or not to be transferred to CoPT in terms of the provisions of this Agreement.

### **18.3 CoPT's Obligations**

In the event of expiry of the Concession by efflux of time or termination, CoPT shall pay compensation payable to IOCL in accordance with Article 17.1 of this Agreement, to IOCL.

IOCL further confirms that payment of Compensation by CoPT in accordance with this Article 18.3 shall be a valid discharge to CoPT in respect of CoPT's obligation regarding payment of Compensation to IOCL under this Agreement.

### **18.4 Risk**

Until transfer in accordance with this Article 18, the LPG Handling Facilities & Services shall remain at the sole risk of IOCL and Common Facilities and Services shall remain at the risk of IOCL and CoPT as the case may be, except for any loss or damage caused to or suffered by either Party due to any act or omission or negligence on the part of the other Party.



**ARTICLE 19**  
**DISPUTE RESOLUTION**

**19.1 Amicable Settlement**

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

**19.2 Assistance of Expert**

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

**19.3 Arbitration**

**19.3.1 Where IOCL & CoPT continue as Government Undertakings:**

In case of any dispute or differences arising out of this agreement it shall be referred to the permanent machinery of arbitration of the Department of Public Enterprises, New Delhi, under the guidelines issued by the Government of India.

**19.3.2 In the event of change of status of IOCL/CoPT or Both as Government Undertakings:**

**(a) Arbitrators**

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

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

**(b) Place of Arbitration**

The place of arbitration shall be Cochin, the headquarters of CoPT in India.

**(c) English Language**

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

**(d) Procedure**

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

**(e) Enforcement of Award**

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

**(f) Fees and Expenses**

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

**(g) Performance during Arbitration**

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






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

**20.1 Representations and Warranties of IOCL**

IOCL represents and warrants to CoPT that:

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



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

## 20.2 Representations and Warranties of CoPT

CoPT represents and warrants to IOCL that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of CoPT, enforceable against it in accordance with the terms hereof; and



- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

### 20.3 Disclosure

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

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## **ARTICLE 21**

### **MISCELLANEOUS PROVISIONS**

#### **21.1 Datum**

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is 0.582 m below mean sea level.

#### **21.2 Survival of Obligations**

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

#### **21.3 Articles to survive Termination**

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

#### **21.4 Joint Responsibility**

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

#### **21.5 Several Obligations**

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

#### **21.6 Severability**

If, for any reason whatsoever, any provision or any part(s) of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession shall be

constructed as if such provision or such part(s) of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.

## **21.7 Notices**

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

### **CoPT:**

Chairman,  
Cochin Port Trust,  
Willingdon Island,  
Cochin – 682 009.  
Telephone: +91-0484-2668200 / 2668566  
Fax No.: +91-0484-2668163 / 2666512  
Email: chairman@cochinport.gov.in

### **IOCL:**

Executive Director (LPG),  
Indian Oil Corporation Limited,  
G-9, Ali Yavar Jung Marg,  
Bandra (East)  
Mumbai – 400 051  
Telephone : +91-022-26421845  
Fax No.: +91-022-26438161  
Email: anjha@indianoil.in

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

## **21.8 Waiver**

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

deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

**21.9 Amendments, Modifications or Alterations.**

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

**21.10 Governing Law**

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

**21.11 Entire Agreement**

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

**21.12 Amendments to the Concession Agreement**

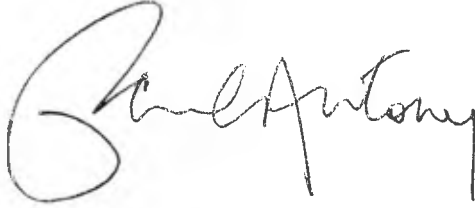
The Parties agree that amendments can be made in the various provisions of this Agreement (including the scope, terms and conditions etc.), through mutual written consent and the same shall be effective from the dates as mutually agreed and decided.

**21.13 Counterparts**

This Agreement shall be executed in two counterparts, each of when executed and delivered, will be an original and both counterparts together shall constitute and the same instrument.

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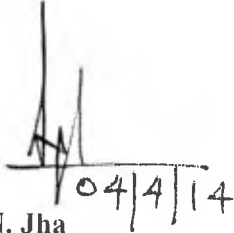
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the date first hereinabove written.



Paul Antony  
CHAIRMAN  
COCHIN PORT TRUST  
For and on behalf of the  
BOARD OF TRUSTEES OF  
COCHIN PORT TRUST



Common Seal of CoPT is affixed in the presence of Mr. Paul Antony who has signed this Agreement in token thereof



04/4/14

A.N. Jha  
EXECUTIVE DIRECTOR (LPG)  
INDIAN OIL CORPORATION LTD.  
For and on behalf of IOCL



Common Seal of IOCL is affixed in the presence of Mr. A.N. Jha who has signed this Agreement in token thereof.

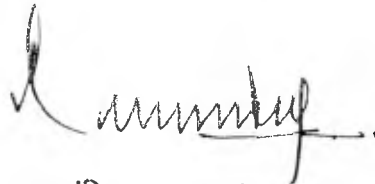
Witnesses:

1. G. P. Rai  
CE, CoPT



4/04/2014

2.



A. PANDIAN.

ए. पंडियन/A. Pandian  
महा प्रबंधक/General Manager  
इंडियन ऑयल कॉर्पोरेशन लिमिटेड  
Indian Oil Corporation Ltd  
केरल राज्य कार्यालय/Kerala State Office

## APPENDIX 1 - PROJECT SITE

The Indicative Layout Plan of the Project Site (the “Project Site”) being handed over to IOCL is attached.

The areas derived as per the final alignment adopted based on the FEED document will be handed over to IOCL as per the provisions of the Agreement.

Any additional land area required by IOCL for their exclusive use shall be charged as per the Scale of Rates prevailing from time to time.

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ARABIAN SEA

PUTHUVYPEEN SEZ

LNG  
RE-GASIFICATION  
TERMINAL

SEZ Road  
VTMS

Proposed 2 Lane Approach  
Road to MULT

SPUR  
BUND

Dredge depth (-)14.50

Proposed Shore Protection  
Dredge Limit

Control Tower

Existing Shore Line

Proposed Shore Protection

PROPOSED MULT

Dredge depth (-)14.50

Turning Circle  
(500m dia)

APPROACH CHANNEL TO COCHIN PORT

VYPEEN

FORT COCHIN

INDICATIVE PROJECT SITE SHOWN THUS

NO. DATE REVISIONS AEE EE DV.CE.



COCHIN PORT TRUST

PROPOSED MULTI - USER LIQUID  
TERMINAL AT PUTHUVYPEEN SEZ  
AT COCHIN PORT

INDICATIVE LAY OUT PLAN

| SCALE | DRG. NO.     | DATE       | REV. | DV. CE. #01 |
|-------|--------------|------------|------|-------------|
| NTS   | 1683-03-2013 | 07-04-2014 | 0    | CE          |

| DESIGNED | DRAWN | TRACED | CHECKED | AEE (PD) | EE (PD) |
|----------|-------|--------|---------|----------|---------|
|          | BINOY |        |         |          |         |

## APPENDIX 2 – ESTIMATED PROJECT COST

| Sl. No. | Item Description                                                                     | Unit | Quantity | Per | Rate        | Amount              |
|---------|--------------------------------------------------------------------------------------|------|----------|-----|-------------|---------------------|
|         |                                                                                      |      |          |     | (in Rupees) |                     |
| 1       | Mooring Dolphins                                                                     | Each | 4        | 1   | 47,606,070  | 190,424,280         |
| 2       | Berthing Dolphins                                                                    | Each | 4        | 1   | 65,317,460  | 261,269,840         |
| 3       | Central Unloading Platform                                                           | Each | 1        | 1   | 86,555,320  | 86,555,320          |
| 4       | 3 storied building of 15 x 25m size for Fire Pump house, offices, control tower etc. | Each | 1        | 1   | 64,175,806  | 64,175,806          |
| 5       | Walkway between Dolphins                                                             | RM   | 220      | 1   | 328,586     | 72,288,920          |
| 6       | Pipe Support/Approach Trestle                                                        | RM   | 116      | 1   | 614,471     | 71,278,636          |
| 7       | Services                                                                             | LS   | 1        | 1   | 68,000,000  | 68,000,000          |
| 8       | Shore Protection                                                                     | LS   | 1        | 1   | 31,380,000  | 31,380,000          |
| 9       | Dredging                                                                             | LS   | 1        | 1   | 384,000,000 | 384,000,000         |
| 10      | Marine fixtures                                                                      | LS   | 1        | 1   | 19,516,400  | 19,516,400          |
| 11      | Soil Investigations & Model studies                                                  | LS   | 1        | 1   | 6,000,000   | 6,000,000           |
| 12      | Fire fighting equipments (Other than foam based)                                     | LS   | 1        | 1   | 122,400,000 | 122,400,000         |
| 13      | Navigation and berthing aid systems                                                  | LS   | 1        | 1   | 42,000,000  | 42,000,000          |
|         | <b>Sub Total: 1</b>                                                                  |      |          |     |             | <b>1419,289,202</b> |
| 14      | Contingencies @ 3%                                                                   |      |          |     |             | 42,578,676          |
|         | <b>Sub Total: 2</b>                                                                  |      |          |     |             | <b>1461,867,878</b> |
| 15      | Supervision charges@3.15%                                                            |      |          |     |             | 46,048,838          |
|         | <b>Sub Total : 3</b>                                                                 |      |          |     |             | <b>1507,916,716</b> |
| 16      | Service Tax @ 12.36%                                                                 |      |          |     |             | 186,378,506         |
|         | <b>Grand Total</b>                                                                   |      |          |     |             | <b>1694,295,222</b> |

Say Rs. 170 Crores




## APPENDIX 3 – PROJECT REQUIREMENTS

### 1. GENERAL

- 1.1 CoPT has awarded to IOCL, the Project “Development of a Multi-User Liquid Terminal at Puthuvypeen SEZ at Cochin Port” under the ownership of IOCL and usage, maintenance and transfer of the same at the end of Concession Period by IOCL, as per the provisions of this Agreement.
- 1.2 As per the mutually agreed terms and conditions:
- (i) CoPT shall, on behalf of IOCL, take up the work for construction of MULT jetty and other associated facilities (Common Facilities & Services) through the EPC Contractor(s) in accordance with the requirements jointly agreed by CoPT and IOCL. The entire construction work of Common Facilities shall be supervised by CoPT. In the mean time, IOCL shall plan the procurement of unloading facilities and other instrumentations required for handling LPG and also provide the same at the Project Site, at its cost and responsibility;
  - (ii) IOCL may use the MULT berth for a maximum period of “161 days” in a Financial Year for handling only LPG, at concessional rates of Wharfage and free of Berth Hire Charges. CoPT will be free to use the jetty for the balance “204 days” for handling of Non-LPG Cargo;
  - (iii) IOCL hereby engage CoPT as the Management Contractor thereby entrusting CoPT with the responsibilities of operating and managing the Common Facilities and Services; and
  - (iv) IOCL may engage a Management Contractor and execute a Management Contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the LPG Handling Facilities and Services.

### 2. PROJECT FACILITIES & SERVICES:

- 2.1 The **Project Facilities and Services** to be constructed by the IOCL (directly or otherwise) on the land and water areas provided by the CoPT, for the Project shall consist of:
- (i) Those required exclusively for LPG handling by IOCL, (ie., LPG unloading arms and related safety and control systems), viz., **LPG Handling Facilities and Services; and**
  - (ii) The **Common Facilities and Services.**



- 2.2 The **Common Facilities and Services** shall include all works/facilities and services at the Project Site to be provided by IOCL during the Concession Period in accordance with this

Agreement, except those meant exclusively for LPG or for Non-LPG cargo handling. They shall include but not be limited to the following:

1. The Project Site including access road and Terminal Basin.
2. Shore Protection works.
3. Perimeter works including access control and security.
4. Lighting and other electrical facilities including standby power.
5. Civil structures including water supply and sanitary arrangements.
6. Fire Fighting Services.
7. Conservancy Services.
8. Navigational Aids and Berthing facilities including Berth Basin.
9. Instrumentation for the operation of Common Facilities & Services.

- 2.3 The **Project Facilities and Services** shall broadly consist of the following:

- (a) Construction of a jetty capable of handling vessels of size ranging from 10,000 DWT to a maximum of 80,000 DWT, LOA- 100m to 230m, beam – 21m to 37 m, draft -13m. The jetty structure shall invariably contain a service platform with provision for 8 nos. unloading arms (2 for LPG and 6 for Non-LPG), 4 nos. berthing dolphins, 4 nos. mooring dolphins, walkways connecting mooring and /berthing dolphins / service platform, an approach trestle for single lane traffic along with pipeline trestle for 10 nos. pipelines including all required fixtures such as fenders, bollards, mooring hooks and / or winches, shore protection works, etc. ;
- (b) Construction of a 3 storied building suitable for housing fire water pumps, sea water cooling pumps, offices, control tower etc.; and also IOCL's control room, substation, DG room, HSD storage area, utility air compressor, heat exchangers, etc. including providing water supply and electrification arrangements in the building;
- (c) Capital dredging of the jetty basin to ensure 13 metres draft;
- (d) Construction of an access road to the jetty from the main road;
- (e) Installation of the unloading arms for LPG and fire fighting equipments necessary for handling LPG and non-LPG Cargo;
- (f) Power and water installations including as required for operating various equipments and facilities for LPG tanker unloading operation and as necessary for the jetty, and peripheral road, surface drainage works, compound wall, etc.;
- (g) Works associated with providing power and water at the Project Site including standby power; and
- (h) All attendant works necessary for ISPS compliance and other statutory clearances and permissions.



- 2.4 Those Facilities and Services required exclusively for LPG handling by IOCL at MULT (LPG Handling Facilities and Services) shall be provided, manned, operated and maintained by IOCL at its own risk and cost. Those Facilities and Services required exclusively for Non-LPG handling by CoPT at MULT (Non-LPG Handling Facilities and Services) are not covered in this Project. It shall be provided, manned and operated by CoPT separately, at its own risk and cost.

**3. REPAIRS, MAINTENANCE & REPLACEMENT OF FACILITIES:**

Subject to the provisions of this Agreement:

- (i) the LPG Handling Facilities and Services and the Project Site shall be kept in good condition, repair and maintenance, normal wear and tear excepted, as per Good Industry Practice, by IOCL. IOCL shall, at its own cost, diligently repair, replace or restore any of the facilities or part thereof, which may be lost, damaged or destroyed during the tenure of the Concession Period, normal wear and tear excepted; and
- (ii) the Common Facilities and Services and the Project Site shall be kept in good condition, repair and maintenance, normal wear and tear excepted, as per Good Industry Practice, by CoPT. CoPT shall diligently repair, replace or restore any of the facilities or part thereof, which may be lost, damaged or destroyed during the tenure of the Concession Period, normal wear and tear excepted, but its cost shall be borne by IOCL and CoPT in the ratio 45:55.

**4. OTHERS**

- (i) The LPG Handling Facilities and Services shall be manned and operated by IOCL. The personnel and other related facilities provided by IOCL for LPG Handling Facilities & Services shall be capable of handling LPG in accordance with the Performance Standards.
- (ii) The Common Facilities & Services shall be manned and operated by CoPT but its cost shall be borne by IOCL and CoPT in the ratio 45:55. The personnel and other related facilities provided by CoPT for Common Facilities & Services shall be capable of handling the Common Facilities & Services in accordance with the Performance Standards. Provided that the cost of manning of Common Facilities is in line with those of similar Major Ports and provided that the final adjustment of costs are based on documents certified by a mutually appointed auditor.
- (iii) Both CoPT and IOCL agree that the need, the nature and the extent of sharing of cost in respect of any agreed common infrastructure other than that agreed above shall be mutually discussed and decided on a case to case basis.



#### APPENDIX 4 - PROJECT SCHEDULE

| Sl. No. | Activity                                                                                                                                                                                                                                                                                      | Milestone Dates |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1       | Issue of Work Order to the FEED Consultant                                                                                                                                                                                                                                                    | 16-07-2013      |
| 2       | Conducting various studies for the MULT by CoPT<br>(a) <i>Mathematical model studies for Mooring analysis</i><br>(b) <i>Geotechnical Investigations</i><br>(c) <i>Any other studies to be identified by Consultant</i>                                                                        | 31-12-2013      |
| 3       | Preparation of FEED (basic engineering) drawings / documents & Project specifications along with tender inputs for engaging EPC Contractor                                                                                                                                                    | 31-01-2014      |
| 4       | Tender activities including the following by CoPT<br>(a) <i>Preparation of tender package (technical and commercial),</i><br>(b) <i>Press advertisement – floating NIT etc.</i><br>(c) <i>Furnishing pre-bid clarifications</i><br>(d) <i>Bid evaluation and finalizing of EPC Contractor</i> | 24-03-2014      |
| 5       | Issue of Work Order for EPC Contract by CoPT                                                                                                                                                                                                                                                  | 01-04-2014      |
| 6       | Execution of the Project                                                                                                                                                                                                                                                                      | 31-12-2015      |
| 7       | Testing & Commissioning of Facilities                                                                                                                                                                                                                                                         | 31-01-2016      |




## APPENDIX 5 - PERMITS AND CLEARANCES

IOCL shall obtain, as required under the Applicable Laws, the following Applicable Permits in respect of Project Facilities and Services:

| Permits /Clearance         | Granting Authority                         |
|----------------------------|--------------------------------------------|
| Electrical Installations   | Chief Electrical Inspectorate, Chennai     |
| Fire Fighting Installation | Department of Explosives (PESO)            |
| LPG Handling Facilities    | Department of Explosives (PESO)            |
| Environmental Clearance    | Ministry of Environment & Forests ( MoE&F) |

Apart from the above mentioned clearances and permits, IOCL shall obtain all other necessary permits and clearances required in connection with Project Facilities and Services for implementation of the Project under this Agreement. In this regard, IOCL will have to ascertain independently the applicable permits/ clearances/approvals apart from what is provided above are required for implementation of the Project.

IOCL/CoPT shall ensure that all the conditions subject to which the Applicable Permits including Environmental Clearance are granted are complied with.



## APPENDIX 6 - PAYMENT SCHEDULE OF SUPERVISION CHARGES

| Stage | Item                                                                             | Percentage | Cumulative Percentage |
|-------|----------------------------------------------------------------------------------|------------|-----------------------|
| 1     | On signing of Concession Agreement                                               | 10%        | 10%                   |
| 2     | On commencement of work                                                          | 10%        | 20%                   |
| 3     | On completion of 50% of piling work                                              | 10%        | 30%                   |
| 4     | On completion of 100% piling work                                                | 10%        | 40%                   |
| 5     | On completion of Central Loading Platform                                        | 10%        | 50%                   |
| 6     | On completion of Mooring Dolphin                                                 | 5%         | 55%                   |
| 7     | On completion of Breasting Dolphin                                               | 5%         | 60%                   |
| 8     | On completion of Walkway, Approach Trestle                                       | 5%         | 65%                   |
| 9     | On completion of building works                                                  | 5%         | 70%                   |
| 10    | On completion of 50% dredging work                                               | 10%        | 80%                   |
| 11    | On completion of Shore protection work                                           | 2%         | 82%                   |
| 12    | On completion of Fire Fighting works and Electrification arrangements            | 5%         | 87%                   |
| 13    | On completion of Marine Fixtures, Equipment, Mooring Hooks                       | 3%         | 90%                   |
| 14    | On completion of Dredging works                                                  | 3%         | 93%                   |
| 15    | On completion of services like road, drainage, water supply, compound wall, etc. | 2%         | 95%                   |
| 16    | Completion of work and handing over                                              | 5%         | 100%                  |



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