



**DEVELOPMENT OF NORTH CARGO BERTH-II  
FOR HANDLING BULK CARGOES AT TUTICORIN  
PORT ON DBFOT BASIS**

**“CONCESSION AGREEMENT”**



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# CONCESSION AGREEMENT

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\* \* \* \*







WHEREAS:

- (A) The Concessioneing Authority is desirous of implementing a Project (as defined hereinafter) for "Development of North Cargo Berth-II For Handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis" through Public Private Participation;
- (B) In or about June, 2009, the Concessioneing Authority invited applications from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project;
- (C) In response to the invitation referred to in recital 'B' above, the Concessioneing Authority received applications from various parties including the application dated 08.01.2010 submitted by the Applicant / Consortium in accordance with the Request for Qualification;
- (D) The Concessioneing Authority, after evaluating all the applications, shortlisted 9 (Nine) number of applicants including the Applicant / Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;
- (E) In response to the Request for Proposal, the Concessioneing Authority received proposals from the shortlisted applicants including the one submitted by the Applicant / Consortium;
- (F) The Concessioneing Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Applicant / Consortium and communicated its acceptance to the Applicant / Consortium vide Letter of Award for Award of Concession dated 12.08.2010;
- (G) The Applicant / Consortium has / have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 to implement the Project;
- (H) Following the issue of the Letter of Award for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.



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**G.J. RAO**  
**CHAIRMAN**  
**TUTICORIN PORT TRUST**

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

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

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

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

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

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

**"Applicable Laws"** means all laws in force and effect as of the date





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

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

**"Applicant"** means Consortium of ABG-LDA Bulk handling Pvt. Ltd. having its registered office at 5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Mumbai – 400 004, India and Louis Dreyfus Armateurs SAS having its registered office at 28, Quai Gallieni, 92158 Suresnes Cedex, France .<sup>2</sup>

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

**"Bid Security"** means the bank guarantee bearing number **00040100004831** of Rs. 33.22 Million (Rupees thirty three decimal two two Million) only dated 03.08.2010 (Issued by Axis Bank, Mumbai Fort Branch) furnished by the Applicant / Consortium along with its Bid.

**"Board"** means the Board of Trustees for the Port of Tuticorin.

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

**"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).



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The name and registered office address of the single applicant to be inserted.



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

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

**"Concession"** means the Concession granted by the Concessioneing Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

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

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

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

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

**"Consortium"** means the consortium consisting of (i) ABG-LDA Bulk handling Pvt. Ltd. and (ii) Louis Dreyfus Armateurs SAS formed, to implement the Project.

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

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

**"Construction Standards"** means the construction standards set out in the Annexure to Appendix - 4.

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

**"Contractor"** means a <sup>3</sup> Person with whom the Concessionaire has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services, including the Management Contractor.

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



**"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.

<sup>4</sup> **"Date of Commercial Operation"** means the date on which the Concessionaire receives the Completion Certificate in accordance with the provisions of this Agreement/ MPT Act.

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

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

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

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



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In case of Projects which do not entail any construction / augmentation of Facilities this will be the Date of Award of Concession.





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

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

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

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

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

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

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

**“Estimated Project Cost”** means the sum of Rs. 3321.60 Million (Rupees three thousand three hundred twenty one decimal six zero Million only) being the cost of the Project as estimated by the Concessioneing Authority and disclosed in the Request for Proposal.

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

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





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

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

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

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

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

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

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

**"Gol"** means the Government of India.

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

**"Government Authority"** means Gol, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Port's Assets,



the Project Facilities and Services or any portion thereof, but shall not include the Concessioneing Authority.

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

**"Independent Engineer"** means a Person appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

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

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

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

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

**"Management Contract"** means the contract between the Concessionaire and the Management Contractor, in respect of obligations of the Management Contractor in respect of the Project in accordance with the Request for Proposal.

**"Management Contractor"** means the Bulk Cargo Terminal Operator of North Cargo Berth-II (NCB-II) along the North Breakwater with whom the Management Contract signed by the Concessionaire.

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



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

6

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





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

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

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

**"Month"** means the calendar month as per the Gregorian calendar.

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

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

**"O&M Contract"** means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Agreement and shall include the Management Contract.

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

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

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

**"Party"** means either the Concessioneing Authority or the Concessionaire as the context may require or admit and

**"Parties"** means both Concessioneing Authority and Concessionaire.

**"Performance Standards"** means the minimum standards of performance set out in Appendix 15 with regards the Project Facilities and Services.

**"Performance Guarantee"** shall mean the bank guarantee(s) / letter(s) of credit procured by the Concessionaire for the benefit of the Concessioneing Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.





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

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

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

**“Port Limits”** means the boundary of Tuticorin Port Trust published in The Gazette of India, Extraordinary Part-II – Section 3 – Sub-Section (i) dated 3<sup>rd</sup> January, 2006.

**“Project”** means “Development of North Cargo Berth-II For Handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis” and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement.

**“Project Capacity”** means the capacity of the Project Facilities and Services to handle 7.00 Million Tonnes of bulk cargoes <sup>7</sup> per annum.

**“Project Contracts”** means collectively this Agreement, the EPC Contract, O&M Contract and any other material contract (other than the Financing Documents, the Escrow Agreement, the Substitution Agreement or any commercial agreement with the users) entered into or may hereafter be entered into by the Concessionaire in connection with the Project and Project Facilities and Services.<sup>8</sup>

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

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

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

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This definition will need to be customised depending on the Project.

This definition may be assessed on a case-to-case basis and accordingly, the relevant documents may inserted.



**"Project Site"** means the area demarcated in Appendix-1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

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

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

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

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

**"Request for Proposal"** or **"RFP"** means the Request for Proposal dated 29.05.2010 issued by the Concessioneing Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

**"Request for Qualification"** or **"RFQ"** means the Request for Qualification dated 23-06-2009 issued by the Concessioneing Authority inviting applications in accordance therewith for shortlisting the competent applicants that can subsequently bid for the Project, and includes any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

**"Requisition"** has the meaning ascribed to it in Article 16.3.

**"Royalty"** means the revenue share payable by the Concessionaire to the Concessioneing Authority, pursuant to Article 9.2 hereof.

**"Safety Standards"** means the minimum standards of safety set out in the Annexure to Appendix 4 with regards the Project/Project Facilities and Services.

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

**"Scheduled Project Completion Date"** means the date on which the project is expected to be completed by the Concessionaire as per the





implementation schedule Appended at Appendix-5. The scheduled date of completion is 24 Months from the Date of Award of Concession.<sup>9</sup>

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

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

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

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

“**Supporting Project Infrastructure**”<sup>10</sup> means:

- (a) maritime access channels;
- (b) port entrance;
- (c) protective works including breakwaters, shore protection;
- (d) access to port for inland transport (by roads, railways)
- (f) basin within port area;

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

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

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

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

“**Tariff Notification**” means the Gazette Notification passed on 19th April, 2010 by Govt.. of India Extraordinary (Part III section 4) vide Gazette No. 102. notifications no. [TAMP/27/2009-TPT dated 23-02-2010] setting out *inter alia* the Tariff and shall include any revisions thereof.



The date would be fixed depending on the Project and in case of phase wise project development be linked to expected completion of the first phase of development.

This definition would need to be used/modified depending on the commitments made by the Concessioneing Authority at the time of bidding of the specific Project. This may either be a Conditions Precedent or ongoing obligation.





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

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

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

**"The Port"** means Tuticorin Port.

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

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

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

## 1.2

### Other References

In this Agreement:

**"BIS"** means Bureau of Indian Standards.

**"BS"** means British Standard.

**"CISF"** means Central Industrial Security Force.

**"DIN"** means German Industrial Standard.

**"FEM"** means Federation of Equipment Manufacturers.

**"IS"** means Indian Standard.

**"ISO"** means International Standards Organization.

**"IEC"** means International Electro Technical Commission.

**"IMDG"** means International Maritime Dangerous Goods.

**"IMO"** means International Maritime Organization.



“**km**” means Kilometre, the unit of length.

“**kWh**” means Kilowatt-hour, the unit of electrical energy.

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

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

“**mm**” means Millimetre, the unit of length.

“**MT**” means Metric Tonne, the unit of weight.

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

“**MSIHC**” means Manufacture Storage and Input of Hazardous Chemicals.

“**OISD**” means Oil Industry Safety Directorate.

“**VAT**” means Value Added Tax.

### 1.3 Interpretations

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid documents, *inter alia* including the RFP and RFQ documents, issued by the Concessioneing Authority and also including addendums, clarifications given in writing in the pre-bid meetings and the submissions of the Concessionaire and the bid submitted by the Concessionaire but not otherwise. In case of any contradictions in the terms of this Agreement and any such other bid documents as referred to above, the terms of this Agreement shall prevail.

In this Agreement unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms,



companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

- (c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) the words "include" and "including" are to be construed without limitation;
- (e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month;
- (i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
- (k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- (l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day





or date shall include both such days or dates;

- (m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and
- (n) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

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

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

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

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

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



## ARTICLE – 2

### CONCESSION AND PORT ASSETS

#### 2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioneing Authority (a) the License Fee and (b) Royalty, and performing its obligations as set out in this Agreement, the Concessioneing Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project/ Project Facilities and Services.

#### 2.2 Concession Period

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

Provided that: -

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

#### 2.3 Acceptance of the Concession

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



Maximum period of 30 years.



## 2.4 Port's Assets

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

## 2.5. Use of Port's Assets

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

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

The information about the Project Site and Port's Assets as set out in Appendix 1 and Appendix 2, respectively is provided by the Concessioneing Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioneing Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioneing Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioneing Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

## 2.7 Acceptance of the Port Assets

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

- (a) inspected the Project Site / Port's Assets, including the berths and all structures thereat and its surroundings;



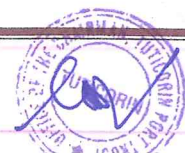


- (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site / Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance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

## 2.8

### Peaceful Occupation

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



## ARTICLE 3

### CONDITIONS PRECEDENT

#### 3.1 Conditions Precedent

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

- (a) The following Conditions Precedent shall be satisfied by the Concessionaire:
  - (i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;
  - (ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
  - (iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
  - (iv) Opening the Escrow Account and executing the Escrow Agreement;
  - (v) Furnishing a copy of the Management Contract ; <sup>12</sup>
  - (vi) Furnishing a certificate from its principal officer / director on the shareholding pattern of the Concessionaire;
  - (vii) Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided, Financial Close shall be deemed to be achieved if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessioning Authority under Article 3.1 (b) hereunder;
  - (viii) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:

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To be retained where relevant i.e. where on the strength of the Management Contract the consortium has qualified technically.



- (a) it / they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
  - (b) it / they has / have the financial standing and resources to fund / raise finances for undertaking and implementing the Project in accordance with this Agreement;
  - (c) the Applicant is / each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has Requested the Concessioneing Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
  - (ix) Furnishing to the Concessioneing Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and
  - (x) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.
- (b) The following Conditions Precedent shall be satisfied by the Concessioneing Authority:
- (i) procurement of the clearances required for the Project <sup>13</sup>, as set out in Appendix 8;
  - (ii) handing over physical possession of the Project Site <sup>14</sup> and / or the Port's Assets for the purposes of the Project;



These would constitute clearances for Project Site including the clearance from MoEF and in principle clearances for the Project. On a project specific basis, this may also include consent for establishment.

Where the Project Site is proposed to be handed over in a phased manner, this provision may be edited to specify only the property, if any that is required to be handed over prior to the commencement of construction.





- 3.2 The aforesaid Conditions Precedent shall be complied with within 90 (ninety) <sup>16</sup> Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.
- 3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioneing Authority at any time in its sole discretion or the Concessioneing Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessioneing Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.
- 3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioneing Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioneing Authority), the Concessioneing Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioneing Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;



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This may be retained, omitted or modified based on the Project.  
This will vary depending on the nature of Conditions Precedent and the Project



**3.5** If the Concessioneing Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

**3.6** In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioneing Authority, the Concessioneing Authority shall be obliged to return the Bid Security / Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.



## ARTICLE 4

## PERFORMANCE GUARANTEE

## 4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioneing Authority an unconditional and irrevocable bank guarantee, in favour of the Concessioneing Authority encashable and enforceable at Tuticorin <sup>47</sup> substantially in the form set forth in Appendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioneing Authority (the "**Performance Guarantee**"). The Performance Guarantee shall be for a sum of Rs.166.08 (Rupees one hundred sixty six decimal zero eight) million only. <sup>48</sup> Till such time the Concessionaire provides to Concessioneing Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioneing Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs.166.08 (Rupees one hundred sixty six decimal zero eight) million only <sup>49</sup> is available in immediate cash to the Concessioneing Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.



Place where the performance guarantee shall be enforced and sums thereunder paid  
 Equivalent to 5% of the Estimated Project Cost.  
 Same as 16 above.





## ARTICLE 5

### INDEPENDENT ENGINEER

#### 5.1 Independent Engineer

- (a) The Independent Engineer shall be selected through a tender process. The Concessions Authority shall in the procurement documents<sup>20</sup> published by it, set out in reasonable detail the scope of work as indicated in Appendix-7 and shortlist bidders based on their technical capability. The Concessions Authority shall within 30 (thirty) Days of the date of this Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessions Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessions Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote. Any objection raised by the Concessionaire shall be considered by the Concessions Authority and Persons against whom such objections are raised will at the discretion of the Concessions Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- (b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the Date of Commercial Operations. The scope of work of the Independent Engineer shall be substantially as set out in Appendix -7.
- (c) The costs and expenses of the Independent Engineer shall be borne by the Concessions Authority and Concessionaire, equally.
- (d) If the Concessions Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessions Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.
- (e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

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The Concessions Authority shall to the extent possible use standard bidding documents prescribed by the Ministry of Finance for appointment of consultants and make available the relevant documents to the Concessionaire.



## ARTICLE 6

### PROJECT IMPLEMENTATION

#### 6.1 Preparation of Designs and Drawings

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

#### 6.2 Review of the Designs and Drawings

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





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

### 6.3 Construction Phase <sup>21</sup>

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

### 6.4 Obligations of the Concessionaire

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

.....  
<sup>21</sup> This provision would need to be modified in case the Project is being developed phase wise or the Project is a brown field project where existing facilities which have been handed over are required to be operated during the Construction Phase.





- (a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.
- (b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- (c) give written notice to the Concessioneing Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessioneing Authority. Provided no such modification / amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioneing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioneing Authority. For avoidance of doubt any such modifications / amendments made without the prior written consent of the Concessioneing Authority will not be enforceable against the Concessioneing Authority;
- (d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (e) provide to the representative(s) of the Concessioneing Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioneing Authority of any works shall not, in relation to such works,
  - (i) amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Agreement; and
  - (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- (f) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;



- (g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and
- (h) to ensure safe and timely construction and completion of the Project / Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction Works and shall remove the interruption or diversion within the period specified by the Independent Engineer.

## 6.5

### Obligations of the Concessioneing Authority

- 5. In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioneing Authority shall:
  - (a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
  - (b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this Agreement;
  - (c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;





- (d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and
- (e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

#### 6.6 Suspension of Works

- (a) Upon recommendation of the Independent Engineer to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioneing Authority, such work is not in accordance with the Construction Standards / Safety Standards.
- (b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessioneing Authority and thereupon represent to the Concessioneing Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

#### 6.7 Issue of Completion Certificate

- (a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire





the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards ("**the Tests**"). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioneing Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days notice to the Independent Engineer;

- (b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioneing Authority copies of all Test data including detailed Test results;
- (c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioneing Authority a Completion Certificate substantially in the form set forth in Appendix 10;
- (d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**") to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessioneing Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioneing Authority shall be entitled to terminate this Agreement;



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

## 6.8

### Change of Scope

- (a) The Concessioneing Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement ("**Change of Scope**"). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to [5% (five percent)] of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to [20% (twenty percent)] of the Estimated Project Cost ;
- (b) If the Concessioneing Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**");
- (c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioneing Authority, the following:
- (i) the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
  - (ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;
- (d) Upon receipt of the foregoing information, the Concessioneing Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or





the Concessioneing Authority does not disagree with the cost assessment of the Concessionaire, the Concessioneing Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessioneing Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioneing Authority may issue an order to implement the Change of Scope;

- (e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- (f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneing Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope.
- (g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioneing Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioneing Authority, and





thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and

- (h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioneing Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8 (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

#### 6. 9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Concessioneing Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Estimated Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioneing Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Estimated Project Cost, the Concessioneing Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioneing Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.



## ARTICLE 7

### OPERATIONS & MAINTENANCE

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

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

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

The Concessionaire shall:

- (a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;
- (b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;
- (c) ensure compliance of the Project Facilities and Services at least with the Project Requirements;
- (d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;
- (e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;
- (f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;





- (g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
- (h) except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, manage and operate the Project Facilities and Services on a first come - first serve, common-user basis, open to any and all shipping lines, importers, exporters, shippers, consignees and receivers, and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof;
- (i) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;
- (j) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;
- (k) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioneing Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and
- (l) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

**(ii) Repairs and Maintenance**

The Concessionaire shall at its own cost:

- (a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Project Requirements and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipments; and
- (b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement





and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioneing Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

**(iii) Replacement of Equipment**

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

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

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

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

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

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

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

**(vii) Access for Inspection**

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessioneing Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere



to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire shall upon prior intimation by the Concessioneing Authority provide the authorized representatives of the Concessioneing Authority access to the Port's Assets / the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed by the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioneing Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

**(viii) Reports <sup>22</sup>**

The Concessionaire shall provide to the Concessioneing Authority, Monthly reports on cargo traffic, unit gross output / discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioneing Authority may require from time to time. If so desired by the Concessioneing Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioneing Authority and its representatives.

**(ix) Computer System and Network**

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessioneing Authority may specify from time to time.

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This provision may be modified depending on the Performance Standards stipulated on a project specific basis so as to ensure that the reports received by the Concessioneing Authority will enable it to effectively evaluate performance.





(x) **Security Arrangements**

The Concessionaire may make his own arrangements for security in the Project Site / Port Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations / procedures prescribed by the Concessioneing Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioneing Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes / requirements of International Maritime Organization as may be applicable to India from time to time.

(xi) **Employment of Personnel**

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility. Further, the Concessionaire shall comply with the requirements of employing the existing personnel / labour as agreed to and set out in Appendix -11<sup>23</sup>. All labour law compliances shall be that of the Concessionaire alone.

(xii) **Minimum Guaranteed Cargo** <sup>24</sup>

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

23

The specific terms agreed in respect of a particular project regarding employment of existing port personnel (as included in the bid documents) would need to be set out in Appendix 11.

24

To be stipulated only in cases where a fully functional facility is being handed over to the Concessionaire or in case where a new facility is handed over, adjacent to an existing one and a fair assessment of expectations from such new facility can be made.





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

Notwithstanding anything contained in the MPT Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "Action") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioneing Authority, its officers, employees, agents and representatives (the "Indemnitees") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnatee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 7(seven) days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

**(b) Rights of Concessionaire**

**(i) Preferential and Priority Berthing**

The Concessionaire may offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the Project



Facilities and Services. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the Parties in accordance with Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any.

**(ii) Unclaimed cargo**

The Concessionaire may at its cost:

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

**(c) Obligations of the Concessioning Authority**

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

**(i) Marine and Port Services**

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

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



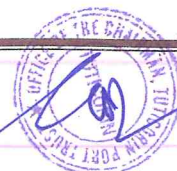


- (b) maintenance of the entrance channel of existing draft at 10.90m (to be enhanced to 12.80m)
- (c) waterside safety and safety of navigation;
- (d) maintenance dredging not required at the Port. One time capital dredging will be carried out to cater to 12.80m draught vessels
- (e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;
- (f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;
- (g) provide for / put in place arrangements for provision of Supporting Project Infrastructure other than those covered under the Concession;<sup>25</sup>
- (h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and
- (i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.



25

To be retained as applicable.



(ii) **Approvals**

The Concessioneing Authority shall promptly grant approvals / consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

**7.2 Utilities and Services** <sup>26</sup>

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

- (a) the power made available shall be as received by the Concessioneing Authority from Tamil Nadu Electricity Board (TNEB), Government of Tamil Nadu. The take off point for electricity shall be from the sub station of TNEB at Red Gate, Harbour Estate;
- (b) Port is receiving water supply from two sources, viz. 3 MGD scheme of water supply through Tamil Nadu Water Supply and Drainage Board from Thamiraparani – Valavallan and Port's 1MGD scheme of water supply from Mangalakurichi at an average of 5000 KL per day. Subject to availability, Port will provide water at approved rates. The take off point for water shall be the nearest available water line – Beach Water Tank at Harbour Estate.
- (c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioneing Authority, install meters to measure the consumption of power and water. The Concessioneing Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;



To be retained as applicable.



- (d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

### 7.3 Liability for shortfall in performance

In the event the Concessioneing Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project / Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioneing Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 14 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioneing Authority which shall be considered by the Concessioneing Authority on merits and the Concessioneing Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

It is clarified that this provision does not prejudice the rights of the Concessioneing Authority upon a Concessionaire Event of Default as set out in Article 15 including the Concessioneing Authority's right to terminate this Agreement which shall remain unaffected.





## ARTICLE 8

### TARIFF

#### 8.1 Levy and Recovery of the Tariff

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

- 8.1.2 "The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or other relief from the Concessions Authority or any Government instrumentality, except in accordance with the express provisions of Agreement, the Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff Notification issued by TAMP and agrees that the Concessions Authority shall not be liable for the same in any manner whatsoever to the Concessionaire."

#### 8.2 Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as may be requested by the Concessions Authority, on behalf of the Concessions Authority and remit the same to the Concessions Authority. Provided, the Concessionaire shall be duly authorized by the Concessions Authority or such other authority as may be competent in this regard, for the purpose of such collection.



## ARTICLE 9

### PAYMENTS TO THE CONCESSIONING AUTHORITY

#### 9.1

#### License Fee

- (a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article-2.4<sup>27</sup>, pay to the Concessioneing Authority the sum of Rs 12.921 million (Rupees twelve decimal nine two one million) only (as specified in the bid documents) (the "**License Fee**"). Such amount shall be paid by the Concessionaire on yearly basis.
- (b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ SBI PLR plus 2% (two percent) per annum on the amount outstanding.

#### 9.2

#### Payments of Royalty

- (a) The Concessionaire shall pay to the Concessioneing Authority Royalty per Month equivalent to 52.17 % (Fifty two decimal one seven percent) of the Gross Revenue chargeable by the Concessionaire ("the **Royalty**").
- (b) Gross Revenue shall be computed on the basis of the maximum Tariffs leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation. It is clarified that discounts and deferments, if any offered by the Concessionaire to the users or amounts if any not collected by the Concessionaire for any reason whatsoever in respect of the Project Facilities and Services, shall be ignored for the purpose of Gross Revenue. Further, in computing the Gross Revenue, income from interest, sale of assets, amounts received by the Concessionaire by way of damages from third parties (excepting damages received from the users on account of demurrage or such other related charges in respect of the Project Facilities and Services), taxes and cesses in respect to the Project Facilities and Services, if any collected and paid to any Government Authority shall also be ignored.
- (c) Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.

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This may need to be edited depending on the Project.

Where the fees is paid on a half yearly/yearly basis, it may also contain an escalation as may be stipulated by the Concessioneing Authority.





- (d) The payment of Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services, and shall be irrespective of Date of Commercial Operation.
- (e) Royalty amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

### 9.3 Utilities or Services

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

### 9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, ship/vessel/user wise information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessioneing Authority a financial statement of the Gross Revenue for every 6 (six) monthly period ending 30<sup>th</sup> September and 31<sup>st</sup> March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

The Concessioneing Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Concessioneing Authority and report to the Concessioneing Authority such information as may be desired by the Concessioneing Authority for any period and the Gross Revenue ("**Special Audit**").





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

## 9.5

### Escrow Account

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

- (a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority<sup>29</sup> :
  - (i) for all taxes due and payable by the Concessionaire;
  - (ii) towards payment of License Fee;

This provision would be discussed at the pre-bid stage and any reasonable requests of the bidders and the lenders would be taken into account with respect to the priority.

- (iii) all construction/implementation expenses relating to the Project / Project Facilities and Services, subject to limits if any set out under the Financing Documents;
  - (iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
  - (v) towards its debt service obligations under the Financing Documents;
  - (vi) towards payment of Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
  - (vii) towards any reserve requirements in accordance with the Financing Documents; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and / or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and / or suspension of the Concessionaire in accordance with the provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with the written instructions of the Concessioneing Authority and the Lenders.
- (b) All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 shall be appropriated in the following order of priority:
- (i) towards taxes and statutory dues payable by the Concessionaire;
  - (ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
  - (iii) all amounts due to the Concessioneing Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and /or adequate reserves have been created in respect thereof to the satisfaction of the Lenders and the Concessioneing Authority.





## ARTICLE – 10

### ASSETS: OWNERSHIP AND PERMITTED CHARGE

#### 10.1 Ownership of Assets

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

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

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

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

#### 10.2 Permitted Charge on Assets

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





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

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



## ARTICLE 11

## SHAREHOLDING

## 11.1 Ownership Structure

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

Name of the Entity	No. of Shares of Paid up Equity Capital	% of Shares of Paid up Equity Capital
ABG-LDA Bulk Handling Pvt. Ltd.	7400	74
Louis Dreyfus Armateurs SAS	2600	26

## 11.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the Exclusivity Period <sup>30</sup> as also maintain their equity holding in the Concessionaire such that <sup>31</sup>:

- (a) The Applicant / members of the Consortium legally and beneficially hold not less than 51% (fifty one percent) of its paid up equity capital until 3 (three) years after Date of Commercial Operations and not less than 26% (twenty six percent) of its paid up equity capital during the balance Concession Period; and
- (b) M/s ABG-LDA Bulk Handling Pvt. Ltd. ("**Lead Member**") legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium's holding in the paid up equity capital of the Concessionaire.

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



<sup>30</sup> Where there is no Exclusivity Period prescribed, this would be expiry of 3 years from the date of Commercial Operations.

<sup>31</sup> This Provision would be edited depending on whether the bidder is a single applicant or a Consortium. Sub Article (b) will be omitted in case the bidder is a single Applicant.



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

### 11.3 Constituent Documents

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

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

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





## ARTICLE 12

### GENERAL RIGHTS, DUTIES AND OBLIGATIONS

#### 12.1 Of the Concessionaire

##### (a) Applicable Permits

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.

##### (b) Taxes & duties

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

##### (c) Insurance

###### (i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- (a) builder's all risk insurance;
- (b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- (c) comprehensive third party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;
- (d) workmen's compensation insurance;
- (e) marine cum storage cum erection insurance; and



- (f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioneing Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

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

The Concessionaire shall insure all insurable assets comprised in the Port's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice ("**Insurance Cover**").

**(iii) Evidence of Insurance Cover**

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

**(iv) Application of Insurance Proceeds**

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



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

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

**(vi) Waiver of Subrogation**

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

**(d) Indemnification**

The Concessionaire shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessioneing Authority, its agents and employees, from and against all claims, demands made against and /or loss caused and / or damages suffered and/or cost, charges / expenses incurred to and / or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioneing Authority, its agents and employees or third party as a result of





any acts, deeds or thing done or omitted to be done by the Concessionaire or as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire to perform any of its duties and / or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner / agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and / or sub-contractor(s) and /or invitees as the case may be, in connection with or arising out of this Agreement and / or arising out of or, in connection with the Concessionaire's use and occupation of the Project Site or Port's Assets and/or construction, operation and maintenance of the Project Facilities and Services.

**(e) Assignability**

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

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

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

**(f) Engagement of Contractors**

The Concessionaire shall engage the Management Contractor and execute the Management Contract, thereby entrusting the Management Contractor with the responsibilities of operating and managing the Project Facilities and Services in the manner



envisaged under the Request for Proposal <sup>32</sup>. A copy of the Management Contract shall be provided to the Concessioneing Authority and the same shall not be amended, substituted or revoked without the prior written consent of the Concessioneing Authority.

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

Provided:

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



<sup>32</sup> This may be added in cases where the project has been awarded on the strength of the management contractor.



**(g) Condition Survey**

- (i) The Concessionaire agrees that at least 6 (six)<sup>33</sup> Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe / notice that the Port's Assets and / or the Project Facilities and Services or any part thereof have / has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioneing Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioneing Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- (ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide / submit to the Concessioneing Authority a guarantee issued by a scheduled bank in India for a sum Rs.166.08 (Rupees one hundred sixty six decimal zero eight) million only at least 2 (two) years prior to the expiry of the Concession Period. In the event of Concessionaire's failure to provide such guarantee, the same shall be deemed to be a Concessionaire Event of Default and the Concessioneing Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.



<sup>33</sup> This period could vary depending on the Project/Concession so as to ensure adequate time for both the survey and restoration of assets.  
<sup>34</sup> 3-5% of the Estimated Project Cost recommended.



## 12.2 Of the Concessioneing Authority

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

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

### (b) Taxes and Duties

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

### (c) Competing Facilities <sup>35</sup>

The Concessioneing Authority shall not operationalise any additional facility within Port Limits for coal handling except the existing two coal jetties (CJ 1 & CJ 2) either on its own or through any other Person until the earlier of: (i) 5 (five) years from the Scheduled Project Completion Date; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of Project Capacity for 2 (two) consecutive years ("**Exclusivity Period**"). Provided, this restriction shall not apply to the additional facilities envisaged at hereunder.<sup>36</sup>

North Cargo Berths-I, III, IV (proposed) in the inner harbour and two coal berths proposed in the outer harbour. Initial work for the above projects have already been initiated and will be continued according to situation.



This provision may be retained on a project specific basis i.e. only for projects which in the reasonable judgement of the Concessioneing Authority would not be viable without such exclusivity.

Details of additional facility planned within Port Limits and disclosed in the RFP.



**(d) General rights of inspection and verification**

The Concessioneing Authority may during the pendency of the Agreement itself or by appointment of Experts verify the performance of obligations of the Concessionaire as set out in this Agreement.

**12.3 Of the Concessioneing Authority and the Concessionaire**

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

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

**(b) Rights to Documents**

**(i) Concessioneing Authority's Documents**

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

**(ii) Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and / or maintenance of the Project / the Project Facilities and Services shall be handed over by the Concessionaire to the Concessioneing Authority free of cost on the Transfer Date.

**(iii) Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the



exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

**(iv) Obligation to Cooperate**

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

**(v) Substitution Agreement**

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioneing Authority of the Lenders' readiness to execute the same.





## ARTICLE 13

### CHANGE IN LAW

#### 13.1 Change in Law

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

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

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

#### 13.2 The Concessionaire's Remedy

- (a) In the event of Change in Law the Concessionaire may propose to the Concessioning Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the



effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

- (b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above Rs.166.08 (Rupees one hundred sixty six decimal zero eight) million only <sup>37</sup> may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost upto Rs. 166.08 (Rupees one hundred sixty six decimal zero eight) million only in any accounting year shall be borne by the Concessionaire;
- (c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioneing Authority, of the following:
  - (i) the particulars, nature and the impact of Change in Law on the Project;
  - (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
  - (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article(c), the Concessioneing Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination /certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.



<sup>37</sup> This should be at least 5 to 7% of the estimated project cost.





- (e) If it is determined that the only material impact of a Change in Law is Additional Cost and the Concessioneing Authority opts to compensate the same in accordance with the preceding sub-article (b), the Concessionaire shall not be entitled to any other remedy nor shall seek any alterations to the Agreement and the Concessioneing Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessioneing Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:
- (i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;
  - (ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI PLR + 2% (two percent) on the amount the payment of which is deferred. Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2;

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs.166.08 (Rupees one hundred sixty six decimal zero eight) million only in any Financial Year, the Concessionaire shall notify the Concessioneing Authority and pay to the Concessioneing Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessioneing Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit

The Concessionaire shall make payment of such compensation within sixty (60) Days of the said financial benefit. If the Concessionaire shall dispute the quantum of such compensation claim of the Concessioneing Authority, the same shall be finally settled in accordance with the dispute resolution mechanism contained in Article 19 herein.





## ARTICLE 14

### FORCE MAJEURE

#### 14.1 Force Majeure Event

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

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

#### 14.2 Non-Political Events

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

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



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

#### 14.3 Political Events

Any of the following events shall constitute Political Event:

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

#### 14.4 Other Events

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



- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry wide or State wide strikes or industrial action;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;
- (d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

#### 14.5 Notice of Force Majeure Event

- (a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "**Notice**") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:
  - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will





have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

- (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
  - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

#### 14.6 Period of Force Majeure

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

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

#### 14.7 Resumption of Performance

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

#### 14.8 Performance Excused

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



absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

**14.9 Costs, Revised Time table**

**(a) Costs**

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

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

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

**14.10 Termination Due to Force Majeure Event**

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty ) Days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.



## ARTICLE 15

### EVENTS OF DEFAULT

#### 15.1 Events of Default

Event of Default means the Concessionaire Event of Default or the Concessioning Authority Event of Default or both as the context may admit or require.

##### (a) The Concessionaire Event of Default

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Concessioning Authority Event of Default or a Force Majeure Event:

- (i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
- (iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- (iv) Delay in payment of Royalty for 2 (two) consecutive Months or more than (5) (five) times in the aggregate during the Concession Period;
- (v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;





- (vi) A default under the Management Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;<sup>38</sup>
- (vii) <sup>39</sup> the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import / export of a particular commodity as a result of which the throughput could not be achieved;
- (viii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- (ix) the Concessionaire passing a resolution for voluntary winding up;
- (x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (xi) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- (xii) levy of an execution or restraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 ( ninety) Days;
- (xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;
- (xiv) the Concessionaire abandons or expresses its intention to revoke/ terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

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This would be case specific.

Should be applicable only for single commodity bulk cargo terminals. This would be added only where Minimum Guaranteed Cargo is specified. The bracketed portion would be project specific.



- (xv) a change in shareholding such that the beneficial interest of the Applicant / Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- (xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and
- (xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and /or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

**(b) The Concessioneing Authority Event of Default**

- (i) the Concessioneing Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- (ii) any representation made or warranties given by the Concessioneing Authority under this Agreement is found to be false or misleading.
- (iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).
- (iv) levy of an execution or distraint on the Port's Assets in any proceedings against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days.





## 15.2 Parties Rights

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

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

## 15.3 Consultation Notice

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

## 15.4 Remedial Process

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

- (a) the change of management or control/ownership of the Concessionaire;
- (b) the replacement of the Concessionaire by a new operator ("**Selectee**") proposed by the Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such



replacement which shall include

- (i) the criteria for selection of the Selectee;
- (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee
- (iii) handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;
- (iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders' charge on the Concessionaire's assets;
- (v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and
- (vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

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

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

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

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

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

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



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

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

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

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



## ARTICLE 16

### TERMINATION OF THE CONCESSION/AGREEMENT

#### 16.1 Termination Procedure

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

#### 16.2 Obligations during Termination Period

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

#### 16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the Concessioneing Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioneing Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioneing Authority to estimate the likely compensation payable by the Concessioneing Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioneing Authority.

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





- (b) data or records [to be specified by Concessioneing Authority] regarding the operation and maintenance of the Project Facilities and Services;
- (c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and
- (d) any other information or records [to be specified by Concessioneing Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities. The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition furnish the particulars called for by the Concessioneing Authority.

#### 16.4

#### Condition Survey

- (a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioneing Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioneing Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Concessioneing Authority on the Transfer Date.
- (b) If, as a result of the condition survey, the Concessioneing Authority shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- (c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessioneing Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessioneing Authority shall be compensated by the



Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

#### 16.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law:

- (a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;
- (b) the Concessioneing Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessioneing Authority by the Concessionaire. Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in accordance with Article 17 in the Escrow Account, the Concessioneing Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Site / Port Assets / Project Facilities & Services by the Concessionaire to the Concessioneing Authority shall be free from any such obligation.



## ARTICLE 17

### COMPENSATION

#### 17.1 Compensation

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

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

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

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

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

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





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

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

If the termination is due to a Concessioneing Authority Event of Default, the compensation payable by the Concessioneing Authority shall be equal to the aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

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

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Port's Assets and the Project Facilities and Services free of cost and Encumbrance.

**17.3 Transfer Fee and Charges**

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

- (a) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;
- (b) the Concessioneing Authority in the event of termination due to an Concessioneing Authority Event of Default or Political Event; and
- (c) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

**17.4 Payment of Compensation to Lenders**

The Concessionaire hereby irrevocably authorises the Concessioneing Authority to pay to the Lenders or at their instruction to any designated bank account in India the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioneing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of its assets taken over by the Concessioneing Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of



compensation by Concessioneing Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessioneing Authority in respect of Concessioneing Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Lenders as the case may be shall be entitled to remove at its/ their cost all such moveables which are not taken over by the Concessioneing Authority and to deal with the same in accordance with their respective rights under law.

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

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

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

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

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



formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioneing Authority in accordance with the requirements thereof under this Agreement. In case the transfer of assets by the Concessionaire to the Concessioneing Authority is delayed for reasons attributable to the Concessioneing Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioneing Authority. Provided however, the Concessionaire shall be liable to pay Royalty in accordance with Article 9.2.

#### **17.7 Remedies Cumulative**

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





## ARTICLE 18

### TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

#### 18.1 General Scope of Transfer/Payment

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

#### 18.2 Concessionaire's Obligations

The Concessionaire shall;

- (a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- (b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessioneing Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (c) hand over to the Concessioneing Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- (d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;
- (e) transfer or cause to be transferred to the Concessioneing Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessioneing Authority; and (iii) those the Concessioneing Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioneing Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessioneing Authority without any further action on part of the respective counter-parties. The Concessionaire shall entirely at its cost, terminate all such



Project Contracts which are not transferred / assigned and / or are not required to be transferred/assigned to the Concessioneing Authority;

- (f) at its cost, transfer to the Concessioneing Authority all such Applicable Permits which the Concessioneing Authority may require and which can be legally transferred. Provided if the termination is on account of Concessioneing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioneing Authority;
- (g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site/Port's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessioneing Authority in terms of the provisions of this Agreement.

### 18.3

#### Concessioneing Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioneing Authority shall pay compensation payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Lenders, or deposit the same in the Escrow Account or on the written instructions of the Lenders to any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the Concessioneing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of the assets shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessioneing Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessioneing Authority in respect of Concessioneing Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

### 18.4

#### Risk

Until transfer in accordance with this Article 18, the Port's Assets and the Project Facilities and Services shall remain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessioneing Authority under this Agreement.





## ARTICLE 19

### DISPUTE RESOLUTION

#### 19.1 Amicable Settlement

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

#### 19.2 Assistance of Expert

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

#### 19.3 Arbitration

##### (a) Arbitrators

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





**(b) Place of Arbitration**

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

**(c) English Language**

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

**(d) Procedure**

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

**(e) Enforcement of Award**

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

**(f) Fees and Expenses**

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

**(g) Performance during Arbitration**

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



## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES

#### 20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

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



Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

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





## 20.2 Representations and Warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of the Concessioneing Authority, enforceable against it in accordance with the terms hereof; and
- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

## 20.3 Disclosure

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



## ARTICLE 21

### MISCELLANEOUS PROVISIONS

#### 21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is (+) 0.64m below mean sea level.

#### 21.2 Survival of Obligations

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

#### 21.3 Articles to survive Termination

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

#### 21.4 Joint Responsibility

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

#### 21.5 Several Obligations

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



## 21.6 Severability

If for any reason whatsoever any provision or any part(s) of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession shall be constructed as if such provision or such part(s) of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.

## 21.7 Notices

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

The Concessioneing Authority:

**Board of Trustees for Tuticorin Port Trust,**  
TUTICORIN PORT TRUST,  
BHARATHI NAGAR,  
TUTICORIN- 628 004  
Fax No: 0461 - 2352160  
Email: chairman@tuticorinport.gov.in

The Concessionaire:

**Tuticorin Coal Terminal Pvt. Ltd.,**  
5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Mumbai – 400 004  
Fax No. 022-2368 3165 Email: ho@abg-lda.com

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





**21.8 Waiver**

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

**21.9 Amendments, Modifications or Alterations.**

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

**21.10 Governing Law**

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

**21.11 Entire Agreement**

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



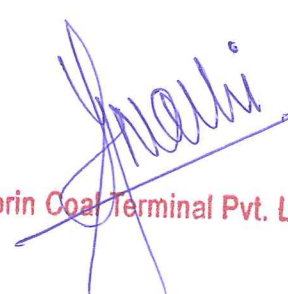
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the dates indicated next to their signatures below:

Common Seal of the Concessioneing Authority is affixed pursuant to its resolution dated [REDACTED] of the Board in the presence of Mr. G.J. Rao, Chairman, TPT who has signed this Agreement in token thereof.

  
**G.J. RAO**  
**CHAIRMAN**




**TUTICORIN PORT TRUST**  
**TUTICORIN - 628 004**  
Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. Gurpreet Malhi, Chief Executive Officer pursuant to Resolution dated 07.09.2010 of its Board of Directors.

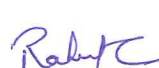
  
**For Tuticorin Coal Terminal Pvt. Ltd.**  
**Authorised Signatory**



WITNESSES

1.   
**R. SRINIVASA KANNAN**  
**CHIEF ENGINEER,**  
**TUTICORIN PORT TRUST,**  
**TUTICORIN - 628 004,**

2.   
**(V. LOGANATHAN)**  
**SECRETARY,**  
**TUTICORIN PORT TRUST**

3.   
**RAHUL D. THAKUR**  
**MANAGER**  
**ABG-LDA Bulk Handling Pvt. Ltd.**

## APPENDIX 1

### PROJECT SITE

- 1) The Tuticorin Port is a major sea Port situated on the east coast of India. It is an artificial Harbour impounding sheltered water between North Breakwater 4.08 Km and South Breakwater 3.88 Km which run almost parallel apart 1.275 Km and provide an entrance width of 153 m at the eastern end.
- 2) Tuticorin Port has 7 Nos along side Berth and 1 multipurpose Berth and 1 container Terminal and 2 coal jetties and 1 Oil Jetty and 2 Shallow Draught Berths.
- 3) The Port of Tuticorin one of the modern Port of India commissioned in 1974 and one among the Major Ports of India.
- 4) It is situated on the south eastern coast of India, 650 km south of Chennai,
- 5) It is located at Gulf of Mannar, Tuticorin at Latitude 8° 45'N and longitude 78° 13'E. The Port is also strategically located close to the East-West International Sea- route, protected by the Sri Lankan land mass from cyclones and inclement weather, making the Port operational round the year. Due to its location, it can attract main line container vessels if sufficient infrastructure facilities are created.
- 6) The Port entrance channel of 2.40 km and 183m wide is dredged to a depth of 12.90m. The tidal variation at Tuticorin is 1.00m

#### Atmospheric Pressure

The mean atmospheric pressure reduced to MSL is 1010.70 milli bars and the monthly maximum observed mean Sea level pressure is 1014.00 milli bars.

#### Temperature

The mean of the daily maxima and minima are about 38° C and 26 ° C in summer and 28 ° C and 20 ° C in winter.

#### Relative Humidity

The maximum humidity are 52% and 81% during South West Monsoon and North East Monsoon respectively. The highest and lowest values of humidity will vary from 81% in winter to 61% in summer.

#### Rain fall

Tuticorin experiences rain from both South-west and North-East monsoons. The major quantum of spell occurs over the period from September to March. The average annual rainfall observed over a period of 37 years is about 610 mm.





However; Tuticorin Port received the highest rainfall of about 1100 mm. In 1997 which was not witnessed in the past 50 years.

### Wind

Monsoonic winds from N to ENE in the months of November to February with average wind speed of 27.5 km/ hr. and heavy land winds from west NW into WSW in the months of May to August with average wind speed of 29 km/h and maximum wind speed of 80 km/hr are predominant.

### Deep Sea

The estimated wind speed exists around 25 km/hr in January, May and October, 15 km/hr in February, March and September, 5 to 15 km/hr in April and November, 35 km/hr in December, 25 to 55 km/hr in July and about 55 km/hr in June and August. Strong wind prevails during South West Monsoon as well as North East Monsoon. The wind direction predominantly vary between 60° - 90° during November to March 220° – 270° during May to September and 180° in April.

### Shore

Morning wind prevailed about 10 knots during January – March, June, July, October and December and less than 5 knots during rest of the year. Evening wind was 10-15 knots throughout the year. Morning wind was from 20° in December to March and about 250° during rest of the year. Evening wind was 110° in December to March and 230° – 290° during the rest of the year.

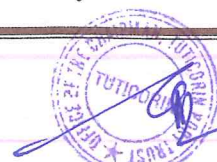
### Cyclone

Cyclones may occur during the North-East monsoon. Occurrence of cyclone at Tuticorin is not frequent. However, this Port experienced a direct hit of a cyclone during November, 1992. The highest wind speed recorded during the cyclone time was 113 km / hour from ESE direction. The Port also experienced during December, 2000 the shadow of a cyclone which crossed near Tuticorin, during which the maximum wave height recorded by the Data Buoy of NIOT placed off Tuticorin was 3.00 meter.

### Wave

National Institute of Ocean Technology has deployed one shallow water wave rider buoy to collect physical oceanographic information off Tuticorin Port. Wave information collected by this buoy has been analyzed and a one year data has been prepared. The wave height, wave period and wave directions are shown in the Table 1 to 3.

1. The peak wave heights are observed during the mid of May and August of the order of 2.2 m and during December of the order of 1.5 m.
2. The peak wave period is 9 s with the wave approaching from South of South East.  
The Peak wave heights of 1.75 m and 2.25 m are observed from the waves approaching from East and South directions respectively.



4. The wave directions vary from about 45 ° (North east) to 225° (South West).

### Currents

The currents along the coast generally set with wind. Currents are weak ranging from 0.5 to 1.00 knot. The currents are southerly or northerly depending on the monsoon seasons.

### Tide

The tide levels from Chart Datum at Tuticorin are given below.

Lowest Low Water Level	:	+ 0.11 m
Mean Lower low Water Springs	:	+ 0.25 m
Mean Low Water Springs	:	+0.29 m
Mean Low Water Neaps	:	+ 0.55 m
Mean Sea Level	:	+ 0.64 m
Mean High Water Neaps	:	+0.71 m
Mean High Water Springs	:	+ 0.99 m
Highest High Water Level	:	+ 1.26 m

The proposed NCB-II will be constructed in the North Breakwater on the southern side of the second conveyor system of TTPS connected by a separate approach arm road. The NCB-II is a west-ward extension of NCB-I to a quay length of 306 m and with a width of 22.90m. A layout plan indicating the project area is enclosed as Drawing-1.

The separate approach arm starts near Red gate at a height of (+) 2.60m and ends at NCB-I at the height of (+) 3.65m.

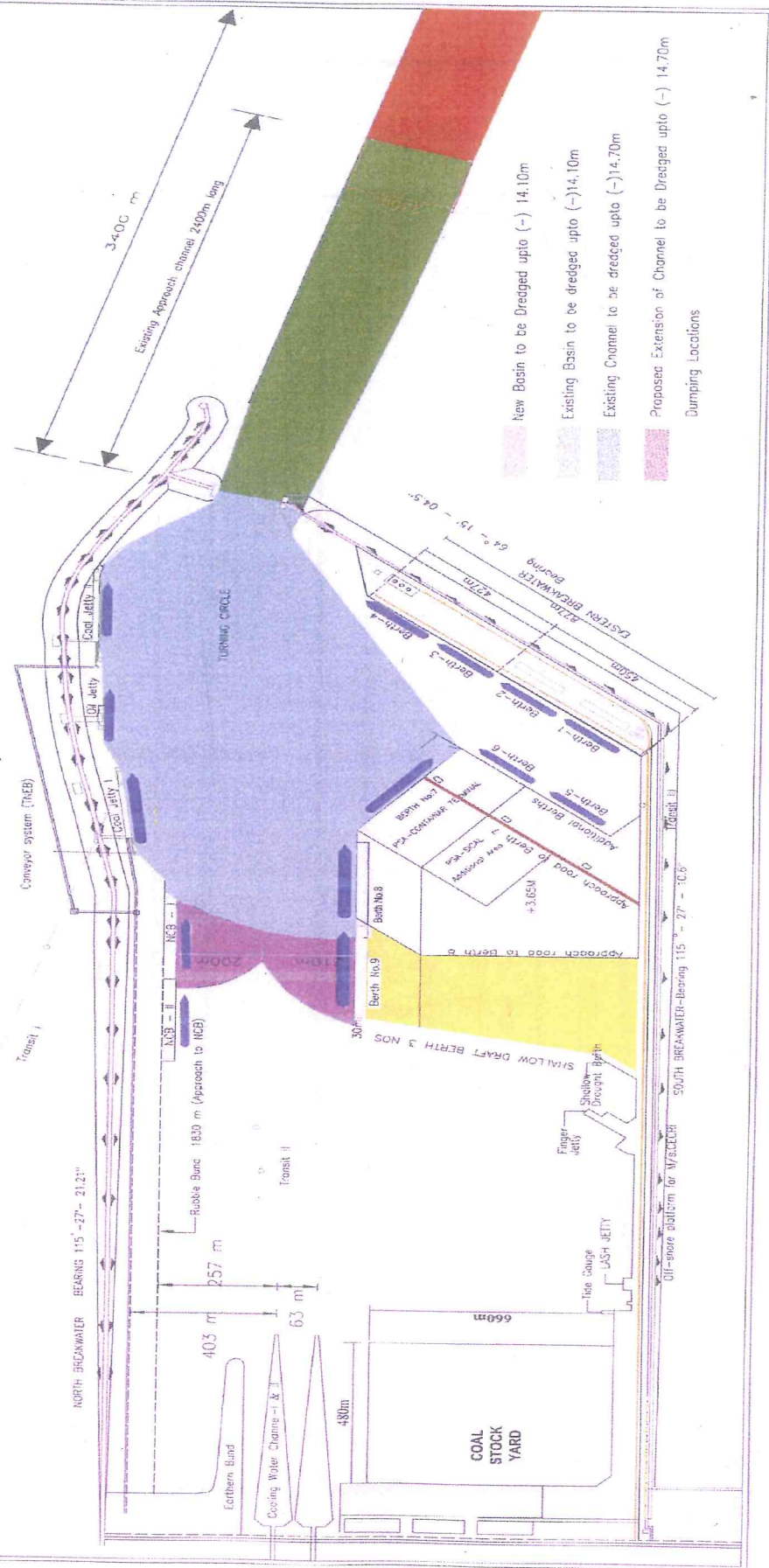
The Stack Yard of size 180m x 700m (12.60 ha) on Hare Island will be located between the New Light House and the Rubble Bunds .A drawing showing the stack yard and conveyor layout is enclosed as Drawing-2. The conveyor route and stack yard location is also enclosed as Drawing-3. The stock yard will be located at Hare Island. The cargo will be evacuated thorough conveyor system from berth to stack yard. A layout plan showing the stack yard and conveyor layout is enclosed (Drawing No. 2).





Drawing No. 1

# LAYOUT OF TUTICORIN

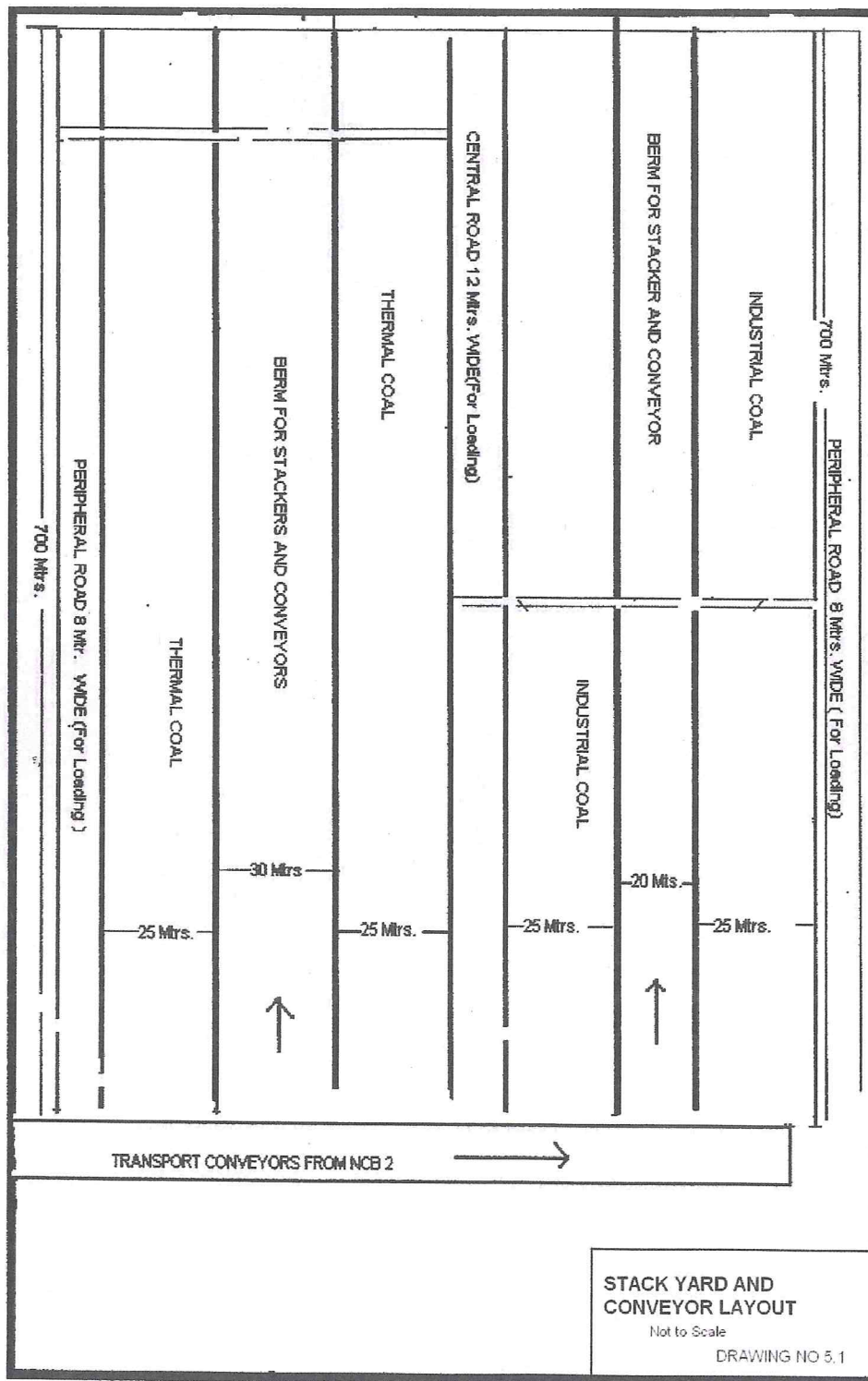


DRAWING SHOWING THE PROPOSED CONSTRUCTION OF NORTH CARGO BERTH II





DRAWING-2



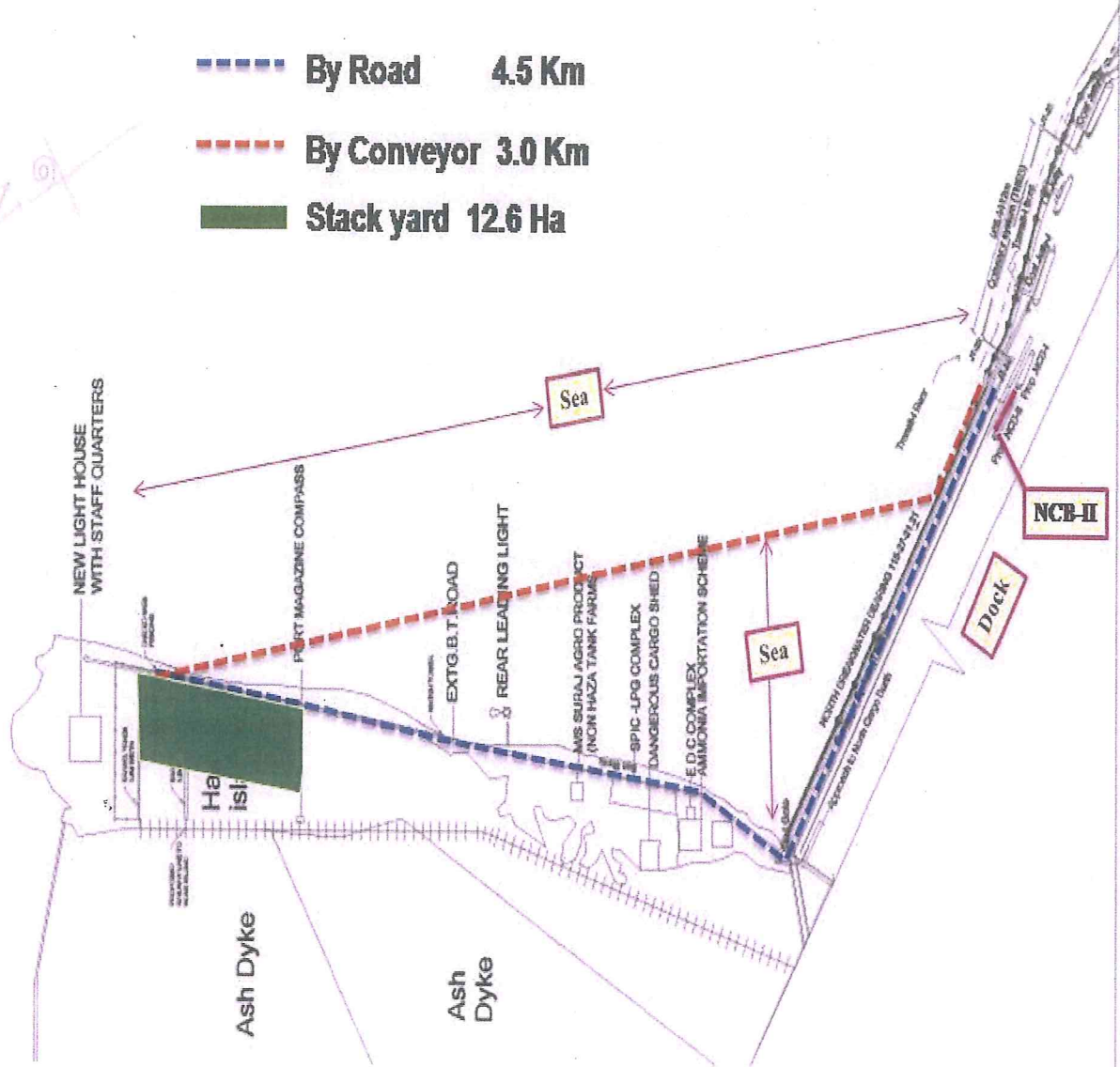
DRAWING-3



NCB-II (Location)

Drawing No.-3

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## APPENDIX 2

### PORT'S ASSETS

The Port's Assets to be handed over are detailed below:

- Water front area = 33,250 Sqm including jetty area of 306m x 22.90m
- Stack yard area at Hare Island =126,000 Sqm
- Area for Installation of conveyor = 33,120 Sqm
- Area of land for conveyor = 3360 Sqm

### Common User Facilities

- Approach Road
- ENTRANCE CHANNEL

The approach channel is 2.40 km. long, 183 m. wide. The approach channel has been dredged to (-) 12.50 m. below CD and dock basin has been dredged to (-)11.90 m. below CD.





### APPENDIX 3

#### SUBSTITUTION AGREEMENT

**THIS SUBSTITUTION AGREEMENT** is entered into on this the ----- day of ----- (Month) --- (Year) at ----- AMONGST, THE TUTICORIN PORT TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Bharathi Nagar, Tuticorin-628 004 (hereinafter referred to as **"the Concessioneing Authority"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. Tuticorin Coal Terminal Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 5<sup>th</sup> Floor, Bhupati Chambers, 13 Mathew Road, Mumbai – 400 004 hereinafter referred to as **"the Concessionaire"** (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

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

WHEREAS,

- a) The Concessioneing Authority for implementing a Project envisaging "Development of North Cargo Berth-II for Handling Bulk Cargoes at Tuticorin on Design, Build, Finance, Operate and Transfer (DBFOT) Basis" by private sector participation (hereinafter referred to as **"the Project"**), has by the Concession Agreement dated [•] entered into between the Concessioneing Authority and the Concessionaire (hereinafter referred to as **"the Concession Agreement"**) granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;



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

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

## **ARTICLE 1**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1**

##### **Definitions**

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

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

**"Financial Assistance"** means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

**"Financial Default"** means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt thereunder by the Concessionaire for a minimum period of 3 (three) months.

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

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

**"Selectee"** means a Person proposed by the Lender/Lender's Representative pursuant to this Agreement and approved by the



Concessioneing Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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

## ARTICLE 2

### ASSIGNMENT

#### 2.1 Assignment of rights and title

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

## ARTICLE 3

### SUBSTITUTION OF THE CONCESSIONAIRE

#### 3.1 Rights of substitution

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

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

#### 3.2

Mumbai

##### 3.2.1

#### Substitution upon occurrence of Financial Default

Upon occurrence of a Financial Default, the Lenders / Lenders'



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

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

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

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

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

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



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

### 3.4 Procedure for substitution

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

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

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

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Selectee shall be deemed to have been accepted. The Concessioneing Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance / deemed acceptance of the Selectee; provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this





Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

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

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

## **ARTICLE 4**

### **TRANSACTION DOCUMENTS**

#### **4.1 Substitution of Selectee in Transaction Documents**

The Concessionaire shall ensure and procure that each Transaction Documents contains provisions that entitle the Selectee to step into such Transaction Documents, in its discretion, in place and substitution of the Concessionaire in the event of such Selectee assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **ARTICLE 5**

### **TERMINATION OF CONCESSION AGREEMENT**

#### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders / Lenders' Representative may by a notice in writing require the Concessioning Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioning Authority shall terminate the Concession in accordance with the Concession





Agreement.

## **5.2 Termination when no Selectee is selected**

In the event that no Selectee acceptable to the Concessioneing Authority is selected and recommended by the Lender/s/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

## **5.3 Realisation of Debt Due**

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lender/s are entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon termination of the Concession Agreement.

# **ARTICLE 6**

## **DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

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

- (a) Termination of this Agreement; or
- (b) When no sum remains to be advanced, or is outstanding to the Lender/s, under the Financing Documents.

# **ARTICLE 7**

## **INDEMNITY**

### **7.1 General indemnity**

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

7.1.2 The Concessioneing Authority shall indemnify, defend and hold the

Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioning Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by the Concessioning Authority.

7.1.3

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

7.2

**Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same.

The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.



## ARTICLE 8

### GENERAL

#### 8.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- (iii) The expressions "Concessions Authority", the "Concessionaire", the "Lender/s" and the "Lenders' Representative" and "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- (iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessions Authority, "Selectee" and the successor in interest of the Lender or Concessions Authority shall have the benefit of this Agreement.
- (v) Failing amicable settlement and/or settlement with the assistance of an Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessions Authority and the Lender/s/Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.
- (vi) This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.





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



**SCHEDULE A**  
**PARTICULARS OF FINANCIAL ASSISTANCE.**

Name and Address of the Lender	Nature and Amount of Financing Assistance

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

SIGNED AND DELIVERED FOR AND ON BEHALF OF

THE BOARD OF TRUSTEES FOR THE TUTICORIN PORT TRUST,  
THE CONCESSIONING AUTHORITY BY ITS AUTHORISED SIGNATORY

Name :  
Title :.

SIGNED AND DELIVERED FOR AND ON BEHALF OF

M/S.TUTICORIN COAL TERMINAL PVT. LTD.,  
THE CONCESSIONAIRE BY ITS AUTHORISED SIGNATORY

Name :  
Title :

SIGNED AND DELIVERED FOR AND ON BEHALF OF

----- THE LENDER / LENDERS'  
REPRESENTATIVE REPRESENTING THE LENDERS, BY ITS  
AUTHORISED SIGNATORY

Name :  
Title :



## APPENDIX 4

## PROJECT REQUIREMENTS

The Concessionaire shall prepare the development scheme for the Bulk Cargo Terminal and get it approved by the Port. All care shall be taken by the Concessionaire during the construction phase to the safety of men & material. The electrical cables, water pipelines, LPG line, oil pipelines and coal conveyor, etc., shall not be damaged while developing the facilities. The damage so caused shall be rectified and made good by the Concessionaire at his cost. Concessionaire has to construct his own car park area, amenity buildings, like time office, changing / locker rooms, canteen, etc., within the licensed premises after approval of the Port. A security fence may be installed along the perimeter of storage yard at Hare Island.

**Berth**

The Concessionaire shall construct the North Cargo Berth-II to a length of 306m and to a width of 22.90 m with the deck level of (+) 3.65m for handling vessels upto 75,000 DWT.

- 2.1. The proposed North Cargo Berth -II will be located along the North Breakwater on the South side, west of the proposed North Cargo Berth – I in the same line and with the berthing face of NCB-II in line with NCB-I, so that all the linkages like road approach, belt conveyor corridor, power and water supply linkages could be shared. A layout plan of Tuticorin Port indicating the location of proposed NCB – II is enclosed in the **Drawing No. 1**.

- 2.1. Type of Berth required

The type and size of the berth will depend on the following

- The size and type of vessel to be berthed
- The type of cargo handling system to be provided on the berth

The import of thermal and industrial coal proposed would be by specialist bulk cargo vessels. These vessels will be of 75,000 DWT size having the following dimensions:

Commodity	DWT	LOA (m)	Beam (m)	Draught (m)
Thermal coal & other bulk cargoes	75,000	245	35.50	12.80

TPT proposes to deepen the basin to 14.10 m and with an UKC of 1.3m., the available draft will be 12.8m. The design vessel selected for a draft of 12.8 m will carry a parcel load of 60,000 tonnes. While planning a berth for a





particular type of vessel, it should be able to accommodate slightly larger vessels with smaller parcel size. The berth could be so designed with suitable sizes and adequate bollards and fendering systems.

### 2.3 Size of berth

The support system for the gantry cranes and other mechanical handling equipment will dictate the geometry of the berth structure. The berth piles are of uniform diameter even though the piles supporting the gantries could be larger than the intermediate row of piles. This may be for speed of piling operations and could ultimately prove economical.

### 2.4. Length of Berth

Since the Berth is mainly for thermal coal with mechanical handling system, the length of the design ship considered is 245 mtrs and the length of the conveyor proposed is 250 m. As per IS 4651 the minimum clearance required on both sides of the ship should be 25 to 30 mtrs. On this basis, the minimum length of the berth required works out to 305 mtrs.  $(30+245+30)$ . Since the transfer house is at the western end of the berth, the length provided is 306 mtrs.

### 2.5. Width of the berth

Careful consideration should be given to the lines of the vessel using the berth. The front legs of cranes and other handling equipment should be kept sufficiently away from the berthing face (not be less than 2.5m) to avoid any strike by the ships. The clearance should be adequate to provide pedestrian access between the bollards and the crane structure and also for provision of ducts for running the pipelines, fire hydrants and other services. Hence, a clearance of 3.70 m is suggested from the berthing face.

The structure of the berths is proposed to be in the form of piled jetty and at the same level, as planned. Tentatively, the pile bends are at a spacing of 7.0 m along the length and 6.0 m along the width. The piles are proposed to be founded at (-) 22 m in rock. The diameter of the piles and founding depth are variable, depending on the design requirements. Above pile dimensions and spacing would need to be reviewed at the time of detailed engineering. Fenders and bollards may be provided at 21 m intervals. The general arrangements proposed on the deck such as of gantry tracks, mobile hopper tracks and other facilities are shown in the enclosed **Drawing No 2**.

### 2.6. Berth Details

The length of proposed NCB- II is 306 m and with a width of 22.90 m. The NCB-II will be able to handle vessels upto 12.80 m draught and 75,000 DWT with an average parcel load of 60,000 Tonnes. The berth can be provided



with fully mechanized Cargo handling arrangements for bulk cargoes movement from berth to designated stock pile area. The berth is proposed to be constructed on BOT basis and it will be single berth configuration.

3. Handling Equipment

The thermal coal and industrial coal to be handled at NCB-II will be unloaded by two grab unloading gantries onto two conveyor systems. The conveyor system will be carried on a trestle for a distance of 155 meters from the western end of the berth towards north crossing the Northern Breakwater and turn towards north-west for a distance of 605 meters upto landfall. This structure will be 12 meters wide and will be on 3 Nos. 1000 mm dia piles spaced 6 meters apart. along the length of the trestle & these will be 7 meters apart.

4. Layout of Conveyors

The coal unloaded by the Grab Unloaders will be discharged through the in-built discharge chute to the respective Conveyors, running parallel to the Berth. There will be two Conveyors and the estimated length of each Conveyor will be 250m. The Conveyors will run from the East end of the NCB to West and transfer the cargo through a set of Cross Conveyors running perpendicular to the Berth along the width of the Berth, through a Transfer house proposed to be located at the West end of the berth (NCB-II). The cross Conveyors will transfer the cargo through a Transfer House located behind the Berth (away from the berth), to a set of Transport Conveyors, which will transport the cargoes to the designated Stack Yards proposed to be located in the Hare Island about 3 Kms. A layout plan indicates the conveyor route is enclosed in **Drawing No.3**.

5. Stock Yard

The proposed stock yard is located between the new light house and the rubble bund at Hare Island about 3 kms away from the NCB II. The total area of the stock yard is 12.60 hectares. The overall size of the stock yard is 700 m x 180 m. A layout plan showing the proposed stock yard is enclosed in **Drawing 4**. The bulk cargoes transported will be stacked using Stackers of commensurate capacity. The stacked bulk cargoes shall be loaded on to trucks using Front End Loaders for evacuation from the Port. The evacuation will be mainly through trucks initially and in later stage by Rail Wagons in addition to truck loading.

6. Estimated Capital Cost

The construction of North Cargo Berth work will broadly include all civil, mechanical, electrical works for installation of a suitable unloading system of





bulk cargoes and the Operation & Maintenance thereof. The total capital cost of the Project is estimated as **Rs. 332.16 Crores.**

## 7. Capacity

The optimal quay capacity of the proposed NCB –II is calculated as 8.88 Million Tonnes Per Annum and the optimal yard capacity is calculated as 6.93 Million Tonnes Per Annum (as per TAMP). As per reference to the TAMP Notification No. TAMP / 52 / 2007-Misc dated 26/02/2008, the optimal capacity of the terminal is the lower value of the optimum quay capacity and optimal yard capacity. The optimal capacity of the terminal is reckoned as 70% of the maximum capacity and hence the annual handling capacity of the Berth is limited to 7.00 MTPA.

## 8. Location of Stacking Area

8.1 As mentioned earlier, NCB-II will handle thermal and industrial coal. Hence, two Stack Yards - one for Thermal Coal and the other for Industrial Coal are proposed next to each other. The stack yards will have the same dimensions.

8.1.1 The stacking capacity is generally 1.5 times the biggest ship capacity likely to call at the berth. In the instant case the ship capacity proposed is 60,000 tonnes. On the basis, the stacking capacity works out to 90,000 tonnes. It is proposed to have a Stack yard of 700m x 180m. The Stack yard, after leaving space for the Stackers and Conveyors will have adequate space for two stacks of 700m x 25m, on either side of the berm on which the Stackers and the conveyors will be installed, It is proposed to have two identical Stack Yards next to each other, one for thermal coal and one for industrial coal as shown in **Drawing no. 5.1.**

8.1.2. The capacity of the Stack yards will be 7 MTPA (for thermal coal and 4.52 MTPA & for industrial coal 2.48 MTPA) with a recommended stacking height of 9m. The quantum of industrial coal to be handled at NCB-II will only be 2.48 MTPA compared to 4.52 MTPA of thermal coal. The stacking quantity per square metre for thermal coal is 6.60 T/Sq.m. and for industrial coal 3.5 T/Sq.m. The area of yards for stacking both thermal coal and industrial coal is 35,000 Sq.m., each.

## 8.2. Location of Stack Yards

8.2.1. The following locations were considered:

- i) Stack Yards on the Fly Ash Reclaimed Area behind the SPIC LPG Complex/ Suraj Agro Products and between them and the Port Magazine.





- ii) Stack Yards on Hare Island between the New Light House and the Rubble Bunds.

8.2.2. The Port is planning to lay a railway line and service road opposite to the existing road. The stack yard in location (i) considered above may hinder the alignment of the railway track and the road. For the Conveyor route proposed i.e. across the sea, the location in (ii) is better suited. It is also seen that for the proposed alignment of the railway line and road, the location (ii) is nearer. The evacuation of the cargoes will be mainly by trucks and it is estimated that there will be not less than 1000 truck movements per day. This will mean a provision of a truck-parking yard, as the arrival and loading of the trucks may not match. There is adequate space available for providing parking yard in this location i.e. location (ii). In view of the above location (ii) is recommended.

### 8.3. Stacking of Cargo

8.3.1. The thermal coal from NCB-II will be transferred to the Stacking Conveyors and will be stacked on both sides of the Berm by Stackers. There will be two Stacking Conveyors of the same capacity as the Transport Conveyors from NCB-II, i.e. 1600mm wide and 2000TPH capacity. These will feed the two Rail Mounted Stackers of 2000 TPH capacity, which will stack the coal. The Stackers and the Conveyors will run on the Berm, 30m. wide located in the middle of the Stack yard. The Stackers will have a boom length of 23m.

8.3.2. The industrial coal will be transferred to a single Stacking Conveyor, which will feed the rail mounted Stacker. The reason for one Stacking Conveyor and one Rail Mounted Stacker had already been explained in the Section on 'Mechanical Equipment'. The Stacker and the Conveyor will run on the Berm of 20m wide, located in the middle of the industrial coal Stack yard. The Conveyor will have the same parameters as the Transport Conveyor, but will have a capacity of 1350 TPH (due to lower bulk density), which will be adequate as the combined capacity of both the Transport Conveyors will only be 1250 TPH. The Stacker proposed will have a capacity of 1500 TPH and boom length of 23m.

### 8.4. Evacuation of cargo

8.5. The thermal and industrial coal is at present proposed to be evacuated by trucks. The trucks will be loaded using front-end loaders. Hence, no reclaiming and loading equipment are proposed.

It is estimated that there will be not less than 1000 truck movements per day. The arrival and loading pattern will not match and it is more than likely that the trucks may have to wait for their turn to get loaded. Hence, a parking yard will be necessary. It is proposed to have an area of 500 sq. meters for parking 10 trucks near the stack yards.



**8.7. Illumination, Sprinkling and Fire fighting**

- 8.7.1. The Stack Yards will be illuminated by High Mast Lights to provide the required illumination levels.
- 8.7.2 Sprinklers will be installed not only to control dust pollution but also to guard against self-ignition.
- 8.7.3. Basic fire-fighting arrangements consisting of fire hydrants and fire pump will be provided for immediate fire control as the location is far away from the main Port.

**9. Other Buildings and Services**

The Concessionaire shall, at his own cost and expense, construct structures / buildings like Time Office, Operation Centre, Canteen etc., subject to the prior written approval of the Concessioneing Authority.

**10. Approach to NCB-II**

The approach road to be provided over the rubble bund (under construction), which starts near the Red Gate with the top level as (+)2.60 m and touches (+) 3.65 m level at LS 920 m and ends with same level (+) 3.65 m at LS 1820m. Hence, if the deck level is at (+) 3.65 m, the approach road running behind the berths would also be at the same level. This approach road shall be used by the Concessionaire. This approach will be a Common User Facility for NCB-I, NCB-II, NCB-III & NCB-IV.

**11. Computer Communication**

The Concessionaire shall automate the operations of the Bulk Terminal and provide for information to be available on-line. The Concessionaire shall install a computer system with adequate number of terminals for planing, including but not limited to import, export, export intake, delivery transfer to stock yard, generation of reports, provision of information to Concessioneing Authority etc., Information about the movement of bulk cargo should be fed to the computer immediately.

**12. Electrification**

Total power requirement of the mechanical handling system proposed is 7000 KVA. There will be two sub-stations, including one for the berth with an installed capacity of 1500 KVA and the other for the stack yard with an installed capacity of 5500 KVA. The BOT operator has to make his own arrangements for the power requirement directly from TNEB





13. Water

Port is receiving water supply from two sources, viz. 3 MGD scheme of water supply through Tamil Nadu Water Supply and Drainage Board from Thamiraparani – Valavallan and Port's 1MGD scheme of water supply from Mangalakurichi at an average of 5000 KL per day. Subject to availability, Port will provide water at approved rates. The take off point for water shall be the nearest available water line – Beach Water Tank at harbour Estate Water for fire fighting purposes of the terminal shall be drawn from sea.

14. Fire fighting requirements

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

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

15. Bunkering and Fuel Supply

The Concessionaire may approach Indian Oil Corporation Limited, a Public Sector Oil Company, who have erected comprehensive facilities for bunkering at the Concessioneing Authority's premises, for bunkering supplies to vessel and other Concessionaire equipment at the Bulk Terminal.

16. Security Arrangement

The security of the Port is vested with Central Industrial Security Force (CISF). The Concessionaire shall abide by the security regulations / procedures as stipulated by the Concessioneing Authority from time to time. However, the Concessionaire shall make his own arrangements for security in the NCB-II, conveyor alignment and stock yard. No charge need to be





paid to TPT towards the security personnel deployed at the Red Gate which is the main entry gate to Berths at North Breakwater. The Concessioneing Authority will assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority to provide all necessary assistance to prosecute offenders who may be apprehended by the Concessionaire, its agents, contractors for committing any offence within the Licensed Premises.

17. Security (Under ISPS Code)

The International Ship and Port Facility Security Code (ISPS) had been under implementation from July, 2004 and, India being a signatory to the IMP Resolution on this adoption of the Code, it is imperative that all Terminal Operator in TPT conforms to the requirements of the Code. The Terminal will be termed as one of the Port Facility of TPT wherein Deputy Conservator is the Port Facility Security Officer. The Operator is required to identify one of their officers as Deputy Port Facility Security Officer of that Terminal, who will be reporting to the Deputy Conservator directly for adoption and compliance of the Code.

The additional security cost involved in providing any infrastructure in the area allotted to the Concessionaire (as required under the ISPS Code) will be borne by the Concessionaire. IMO and ILO jointly are also in the process of coming out with a proposal on Port security which may require further strengthening of the security. Whenever such an additional Code on Port security is ratified by the Indian Government, the Concessionaire will be required to comply with such code at his cost.



**Annexure**

**CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE  
STANDARDS AND SAFETY STANDARDS**

**A. General**

The Concessionaire shall execute the project by completing civil works as per the Project Requirements and provide appropriate equipment for cargo handling and other support facilities for proper and efficient functioning.

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

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

5. The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines. It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

**B. Civil Construction Work**

**B. 1. Dry Bulk, Break Bulk & Container Terminals**

The civil construction work may comprise variety of works such as dredging, reclamation, construction of berths, development of back-up area for storage of containers, approach roads, operational buildings / offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS / ISO / IEC standards to ensure that the construction work carried out by it meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with



the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following paragraphs.

### ***Indian Standards for Construction of Ports and Harbours***

IS 4651-Part-1- 1974	Code of practice for planning and design of ports and harbours: Part 1 Site investigation
IS 4651-Part 2-1989	Code of practice for planning and design of ports and harbours Part 2 Earth pressure
IS 4651-Part III-1974	Code of practice for planning and design of ports and harbours: Part III: Loading
IS 4651- Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part 5-1980:	Code of practice for planning and design of ports and harbours Part:5 Layout and functional requirements
IS7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and harbour structures: Part 1 Concrete monoliths
IS 9527: Part 3:: 1983	Code of practice for design and construction of port and harbour structure: Part 3 Sheet pile walls
IS 9527: Part 4: 1980	Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures
IS 9527: Part 6: 1989	Code of practice for design and construction of port and harbour structures: Part 6 Block work
IS 10020: Part 4: 1981	Recommendations for design and construction of port and harbour components Part 4 Slipways.
IS 9556: 1980	Code of Practice for design and construction of diaphragm walls

### ***Indian Standards for Foundation Work***

IS 2911: Part 1:Sec 1:1979	Code of practice for design and construction of pile foundations Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles
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IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 1:Sec 3:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles
IS 2911: Part1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations – Part I: Design
IS 2974: Part 1: 1982	Code of practice for design and construction of Machine Foundations-Part 1 Foundation for Reciprocating Type Machines.
IS 2974: Part 2: 1980	Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)
IS 2974: Para 3: 1992	Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)
IS 2974:: 1979:	Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary type machines of low frequency.
IS 2974: Part 5: 1987	Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drop crusher and jolter)
IS 1080: 1985	Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).
IS 13094: 1992	Guidelines for Selection of ground improvement techniques for foundation in weak soils.



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

IS 875(Part I to V): 1987	Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.
IS 456: 2000	Code of Practice for plain and reinforced concrete. IS: 800: 1984 Code of practice for general construction in steel
IS: 801: 1975	Code of practice for use of cold formed light gauge steel structural members in general building construction.
IS: 803: 1976	Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.
IS 1893: Part 1: 2002	Criteria for Earthquake Resistant Design of Structures Part I – General Provision and Buildings
IS 1893: Part 4: 2005	Criteria for earth quake resistant design of structures –Part 4- Industrial Structures including Stack-like Structures.
IS 4326: 1993	Code of Practice for Earth Quake Resistant design and construction of buildings.

### **C. Cargo Handling Equipment**

#### **C-1 General**

The concessionaire in accordance with relevant standards shall provide the type and capacity of equipment required for handling the specified cargo / containers. The equipment shall generally conform to the following standards and code of practices.

#### **C-2 Electric Cranes - Wharf and Gantry Cranes**

The crane and its mechanisms shall be designed and constructed in compliance with the latest editions and amendments of the following standards and codes of practice. Standards equivalent or higher in BS, JIS, FEM, DIN, ISO, IEC are also acceptable.



### **Structures and Mechanism**

IS 807: 2006	Design, erection and testing (Structural Portion) of Cranes and Hoists – Code of Practice. BS 5400 – Part 10 Steel concrete and composite bridges - Code of practice for fatigue
IS 4137 - 1985	Specification for heavy duty electric overhead traveling and special cranes for use in steel works

### **Material**

IS 800: 1984	Code of Practice for general construction in steel
IS 2062: 2006	Hot rolled low medium and high tensile Structural Steel
IS 2644: 1994	High tensile steel castings
IS 2266: 2002	Steel Wire Ropes for General Engineering Purposes-specification
IS 3177: 1999	Code of Practice for Electric Overhead Traveling Cranes and Gantry Cranes other than Steel Work Cranes Electricals IEC standards IEE – regulations for the electrical equipment of buildings BS 4999 / FEM 3rd edition Booklet 4 – Motors BS 171, BS 3941, BS 3938 – Transformers BS 99 - Fuses

### **Welding**

IS 7307: Part 1: 1974	Approval test for welding procedures Part 1 Fusion welding of steel.
IS 7310: Part 1: 1974	Approval test for Welders working to approved welding procedures – Part 1: Fusion welding of Steel.

### **Painting**

BS 5493	Code of practice for protective coating of iron and steel structures against corrosion Swedish Standard Sa 2,5 or SIS ST3, SIS 055900 surface preparation
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### **General**

IS 13367:Part 1: 1992	Safe use of Cranes - Code of Practice Part 1 General
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### **Classification of Crane Structures**

Class of utilization:	U8 (4 Million loading cycles)	State of loading:	Q3
Group classification:	A8		
Impact factor:	1.4		
Duty factor:	0.9		
Nominal load spectrum:	0.8 of rated capacity factor		

### **Mechanism**

Class of Utilization State of Loading Group Classification

Hoist	T8	L3	M8
Traverse	T8	L3	M8
Travel	T5	L2	M5
Boom hoist	T3	L3	M4

The wharf cranes shall be designed for Stability as per BS 2573 Part I & II.

### **C-3 Mobile Equipment**

IS 4357: 2004	Methods for Stability Testing of Fork Lift Trucks
IS 4573: 1982	Specification for Power Driven Mobile Cranes
IS 13473: Part 2:1992/	Cranes - Vocabulary Part 2 Mobile cranes ISO 4306-1985
IS 13558: Part 2:1995/	Cranes - Controls - Layout and Characteristics - Part ISO 7752 -2- 1986 Mobile Cranes
IS 13834 : Part 2: 1993/	Cranes - Classification: Part 2 Mobile cranes ISO 4301 - 2 :1985
IS 13870: Part 2: 1993/	Cranes and Lifting Appliances - Selection of Wire ISO 4308 : 1988 Ropes - Part 2: Mobile Cranes - Coefficient of utilization
IS 14469: 1997/	Mobile Cranes - Determination of Stability ISO 4305 - 1991



IS 14474: Part 1: 1997/	Mobile Cranes - Experimental Determination of Crane ISO 11662-1 :1995 Performance – Part 1 : Tipping Loads and Radii
IS 3173: 1965	Specification for High pressure connections for fuel injection equipment for diesel engines

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

IS 4776:Part I: 1977	Specification for Troughed Belt Conveyors-Part I Troughed Belt Conveyors for Surface Installation
IS 8597 – 1977	Flat Belt Conveyors
IS 11592 – 2000	Code of practice for selection and design of Belt Conveyors
IS 7465 – 1974	Portable and Mobile troughed Belt Conveyor
IS 7155:Part 1: 1986	Code of recommended practice for conveyor safety: Part 1 General Information
IS 7155:Part 2: 1986	Code of recommended practice for conveyor safety : Part 2 General Safety requirement
IS 7155:Part 3: 1986	Code of recommended practice for conveyor safety : Part 3 Belt Conveyors and feeders
IS 7155:Part 4: 1990	Code of recommended practice for conveyor safety: Part 4 Vibrating Conveyor/feeder
IS 7155:Part 5: 1990	Code of recommended practice for conveyor safety : Part 5 Apron Conveyor/Apron Feeder
IS 7155:Part 6: 1990	Code of recommended practice for conveyor safety : Part 6 Selection, Training and Supervision of Operators
IS 7155:Part 7: 1990	Code of recommended practice for conveyor safety: Part 7 Inspection and Maintenance
IS 7155:Part 8: 1994	Code of recommended practice for conveyor safety : Part 8 Flight Conveyors (scraper conveyors)

#### Idlers and Pulleys

IS 8598 – 1987	Idlers and Idlers Sets
IS 8531 – 1986	Pulleys for Conveyors
IS 11507 – 1985	Synchronous Drive Pulleys

#### Conveyor Belts

IS 1891(Part I & II)-1978	Rubber Conveyor Belting
IS 1891 – 1988	Amendment to above conveyor
IS 22131 Part I 1980	Steel Cord Conveyor Belting



**C-5 Equipment for Bulk Handling**

IS 10463: Part 2 1983 Reaffirmed 2004	Glossary of Terms for Bulk Handling equipment: Stacking Loading and Reclaiming Equipment
IS 10463: Part 6 1983 Reaffirmed 1999	Glossary of Terms for Bulk Handling equipment Cyclic loose bulk handling equipment (Non stationery)
IS 13082: Part 1 1991 (Reaffirmed 2001)	Bulk Handling equipment - ship unloader-gantry mounted grab type – Code of practice for design manufacture and erection-mechanical and structural requirements
IS 13082: Part 2 1991 (Reaffirmed 2001)	Bulk Handling equipment - ship unloader-gantry mounted grab type – Code of practice for design manufacture and erection-electro mechanical requirements.
IS 13082: Part 3 1991 (Reaffirmed 2001)	Bulk Handling equipment - ship unloader-gantry mounted grab type – Code of practice for design manufacture and erection-information to be supplied by the purchaser and the manufacturer
IS 13048: Part 1 1991 (Reaffirmed 2004)	Bulk Handling equipment - mobile continuous type – rules for design of structures.
IS 14416: 1996 (Reaffirmed 2001)	Bulk Handling equipment -boom type bucket wheel reclaimer – rail mounted – design manufacture and erection – code of practice.
IS 14447: 1996 (Reaffirmed 2001)	Bulk Handling equipment - single boom slewable stacker – rail mounted – design, manufacture and erection-code of practice

**D. Electrical**

IS 325: 1996 IS 900: 1992 IS 1231: 1974	Three-phase induction motors Code of practice for installation and maintenance of induction motors Dimensions of Three-phase Foot-mounted Induction Motors
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IS 2223: 1983	Dimensions of flange mounted ac induction motors
IS 3682: 1966	Flame-proof ac motors for use in mines
IS 3842: Part 2 : 1966	Application guide for electrical relays for ac systems: -Part 2 Over current relays for generators and motors
IS 4029: 1967	Guide for testing three-phase induction motors
IS 8151: 1976	Single-speed three-phase induction motors for driving lifts
IS 8789: 1996	Values of performance characteristics for three- phase induction motors
IS 9628: 1980	Three-phase induction motors with type of protection 'n'
IS10242:Part3Sec 1:1983	Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors
IS 12615: 2004	Energy Efficient Induction Motors - Three Phase Squirrel Cage
IS 13529: 1992	Guide on Effects of Unbalanced Voltages on the Performance of Three-Phase Cage Induction Motors
IS 13555: 1993	Guide for Selection and Application of 3-Phase A. C. Induction Motors for Different Types of Driven Equipment
IS 14122: 1994	Built in thermal protection for electric motors rated up to 660 V ac
IS 14377: 1996	Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation
IS 15429: 2004	Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987	Code of practice for earthing
IS 3151: 1982	Earthing transformers
IS 5553(Part 6) 1991	Reactor Parts – Earthing of Transformers
IS 9921: Part 1: 1981	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1 000 V - Part I: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 1982	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction



IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing – Specification
IS 14981: 2001	Live Working - Earthing or Earthing and Short- Circuiting Equipment Using Lances as a Short- Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 : Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers – Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732	IS 732: 1989 Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1 for working voltages upto and including 1100 V
IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working voltages from 3.3 kV upto and including 11 KV
IS 7098 (Part 1) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages upto and including 1100 V
IS 7098 (Part 2) : 1985	Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV upto and including 33 kV
IS 7098 (Part 3) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV upto and including 220 kV
IS 10118 (Part 1) : 1982	Code of Practice for selection, installation & maintenance of switch gears and Control gears : Part 1 General





IS 10118 (Part 2) : 1982	Code of Practice for selection, installation & maintenance of switch gears and Control gears: Part 2 Selection
IS 10118 (Part 3) : 1982	Code of Practice for selection, installation & maintenance of switch gears and Control gears: Part 3 Installation
IS 10118 (Part 4) : 1982	Code of Practice for selection, installation & maintenance of switch gears and Control gears: Part 4 Maintenance For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

**E. Operations & Maintenance Standards: Repairs, Maintenance and Replacement**

The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out.

The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR.

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

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

While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards or in its absence ISO / OISD Standards. In the event that the concessionaire, by necessity or





otherwise needs to follow any other country standard it shall be equal or superior to the standard specified above.

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

## E.1 Maintenance Standards

ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1

### General

BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

## E.2 Painting

IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147 : 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419 : 1989	Antifouling paint, brushing for ship's bottom and hulls-Specification (second revision)
IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
IS 6948 : 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships



IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

**F. Safety Standards**

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law/international conventions, as relevant, from time to time including those required under the following :

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 alongwith The Explosive Substance Act, 1983 & The Explosive Rules, 1983
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition)
11. MARPOL CONVENTION
12. International Maritime Dangerous Goods Code [Besides the above, the Concessioning Authority may prescribe standards specific to the port/project]



*[Handwritten signature]*



## APPENDIX 5

### PROJECT SCHEDULE

The Project will be completed and the facilities will be fully operational within 24 months from the date of signing the Concession Agreement.

Milestone date	Activity/level of completion of project
6 months from Date of Award of Concession	25% of Construction Works should have been completed
12 months from Date of Award of Concession	50% of Construction Works should have been completed
24 months from Date of Award of Concession	100% of Construction Works should have been completed





## APPENDIX 6

### DESIGNS AND DRAWINGS

1. Berth details
  - a) Cross Section of Berth
  - b) Cross Section of Pile & pile muff
  - c) Deck slab details
  - d) Details of beams in main jetty
  - e) Cross section of approach and main jetty
  - f) Panel arrangement of deck slab
2. General Arrangement drawings of equipments at berth, stock yard, etc.
3. Conveyor trestle transfer house
4. All technical specification of equipment proposed to be installed in the berth and at stock yard and major components
5. Design details of equipment
6. Bar chart indicating period of completion of various stages of progress of work
7. Any other details deemed fit as indicated by the Concessionaire in the Bid.

**Note:** The above documents were received by a Representative of M/s ABG-LDA Bulk Handling Pvt. Ltd. on 30.6.2010.



## APPENDIX 7

### TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

#### 1. Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Project. The role and functions of the Independent Engineer shall include the following:

- (i) review of the Designs and Drawings;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as regards the Design; and
- (vii) undertaking all other duties and functions as envisaged under the Agreement.

#### 2. Review of Designs and Drawings

- (i) The Independent Engineer shall undertake a detailed review of the Designs and Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.
- (ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioneing Authority, if any while furnishing the comments.



- (iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.
- (v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- (vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- (vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- (viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.





- (ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.
- (x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioneing Authority.
- (xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority and the Concessionaire of the same.
- (xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Annexure hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.



## Annexure

### Tests

[Depending on the parameters of the Project / Construction Requirements, the Tests shall be as per Good Industry Practice shall be stipulated on a project specific basis and listed in this Annexure.]

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the project requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and its contractors will be as per the relevant provisions of this Agreement.
- 2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the best industrial practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
- 5) The Independent Engineer at his discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipments and machinery and any other component to ascertain the soundness of the work.
- 6) Schedule of test.
  - (i) the Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of the Agreement
  - (ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted





7) Tests

- (i) **Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Port requirements to determine that all works and equipment forming part thereof conform to the provisions of the Agreement.
- (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery
- (iii) **Structural test :** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
- (iv) **Environmental Audit :** The Independent Engineer shall carry out a check to determine conformity of the project requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
- (v) **Safety Review :** Safety Audit of the project requirements shall have to be undertaken with the assistance of the relevant statutory authorities to determine conformity of the project requirements with the provisions of the Agreement.
- (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged through the Concessionaire.

- 8) The Independent Engineer shall obtain a copy of operational and maintenance manual of the project requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements.

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual will also cover the minimum maintenance requirement to adhere to the performance standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.

- 9) The test procedure shall be followed as per ASTM, BIS, IS

- 10) The tests shall also satisfy the appropriate Authority and Certification, such as :

- (i) Dock safety Directorate
- (ii) Environmental Authority
- (iii) Director of Explosives
- (iv) Fire Authority
- (v) Ground Water Authority
- (vi) Customs





- 11) Sub-soil investigation on the alignment of conveyor system for evacuation of bulk cargoes to Hare Island
- 12) Environmental tests as per the guidelines of MOE&F
- 13) Bearing capacity of soil and pavement tests at stock yard.



A handwritten signature in blue ink, located below the Tuticorin Coal Terminal stamp.



## APPENDIX 8

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

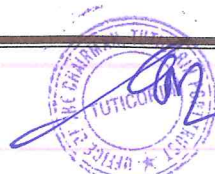
- A. List of Applicable permits to be obtained by the Concessionaire before commencement of Construction works

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

ACTIVITY	AUTHORITY
Environmental Law	The Authority already obtained Environment Clearance for the Construction of North Cargo Berth-II during August, 2007. However, if required, the Concessionaire shall obtain environmental clearances for development of stock yard, conveyor system and allied works.
Plot Plan approval	Dock Safety Inspector / OISD Guidelines
Electrical Installation	Central Electricity Authority
Fire Safety Concerns	OISD guidelines or Applicable International Codes / Practices
Public Liability Insurance during construction / commissioning	Appropriate Insurance Agency
Custom Notification	Commissioner of Customs

- B. The following is a list of the permits available with the Concessioning Authority:

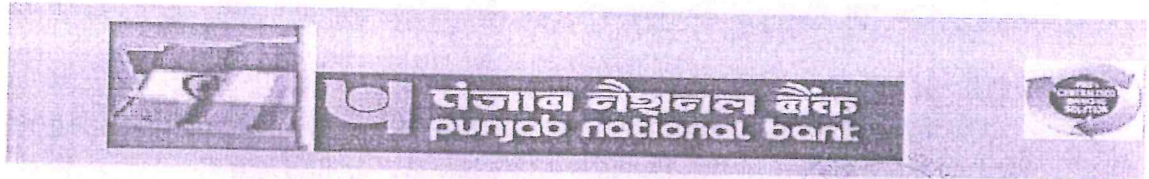
- (i) The Authority already obtained Environment Clearance for the Construction of North Cargo Berth-II during August, 2007.
- (ii) Port limit Notification given by Ministry of Shipping - published in The Gazette of India, Extraordinary Part-II – Section 3 – Sub-Section (i) dated 3rd January, 2006.
- (iii) TAMP approval dated 23-02-2010
- (iv) PPPAC approval dated 04-02-2010



APPENDIX 9

PERFORMANCE GUARANTEE

A. COPY OF THE BANK GUARANTEE ISSUED FOR THE 1<sup>ST</sup> YEAR



(Foreshore Road Branch), Raheja Chambers  
Nariman Point, Mumbai 400 021.  
(Tel.No.22790000-01, Fax No.22026072, 22823033)

September 6, 2010

The Board of Trustees for Tuticorin Port,  
Tuticorin Port Trust,  
Bharati Nagar,  
Tuticorin- 628004

Dear Sir

Reg: Bank Guarantee



Please find enclosed our Letter of Guarantee Nos. 1232ILG011210 dated 06.09.2010 for an amount of Rs.16,60,80,000/- (Rupees Sixteen Crores Sixty Lacs Eighty Thousand Only) valid for a period upto 01.12.2011 issued at the request of M/s.Tuticorin Coal Terminal Pvt. Ltd Ltd. by this office under the joint signatures of:

1. Ms.Sonal Seth, Officer
2. Mr.GK Mohan, Sr. Manager

*It is advised that you, in your own interest, may verify the genuineness of the guarantee from our controlling office, which is Circle Office, Cuffe Parade, Maker Tower 'F', Mumbai-400005.*

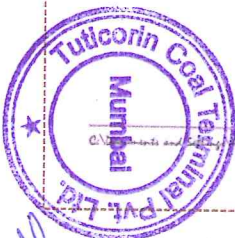
Thanking you,

Yours faithfully,

For PUNJAB NATIONAL BANK  
(Foreshore Road, Branch)  
Raheja Chambers,  
Nariman Point, Mumbai-400 021.

*[Signature]*  
-23656  
Officer

*[Signature]*  
Sr. Manager  
11824



C:\Documents and Settings\Administrator\My Documents\NISC\Bank Guarantee\Cor Ltr-BG.doc





To,  
The Board of Trustees for Tuticorin Port,  
Tuticorin Port Trust,  
Bharati Nagar,  
Tuticorin - 628 004.

PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE executed on this the 6<sup>th</sup> day of September, 2010 at Mumbai by Punjab National Bank having its Head / Registered office at 7, Bhikhaji Cama Place, New Delhi hereinafter referred to as "the Guarantor" which expression shall unless be repugnant to the subject or context thereof include its successors and assigns; In favour of

THE BOARD OF TRUSTEES OF, TUTICORIN PORT a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Bharathi Nagar, Tuticorin - 628 004 (hereinafter referred to as "the Board" or "the Concessioneing Authority") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors and assigns.

WHEREAS

- a) The Board, vide its Request for Proposal dated 29.05.2010 ("the RFP") invited duly short listed bidders to bid for implementation of a project envisaging Development of North Cargo Berth-II For Handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis more particularly described in Appendix-1 and hereinafter referred to as ("the Project");
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of M/s ABG Bulk Handling Pvt. Ltd. and Louis Dreyfus Aramteurs S.A. ("the Consortium") and issued the Letter of Award No. E(C)/F.59/11/NCB-II/2010/PD/D.2986 dated 12.08.2010



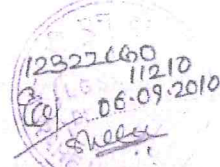
45738  
171602  
SEP 06 2010  
SPECIAL AGENT  
ADHESIVE  
R.D. 5002001-PB5506  
MAHARASHTRA

THE KAPOL CO-OP. BANK LTD.  
FORT BRANCH

The Kapol Co-operative Bank Ltd.,  
Fort Branch, Vithaldas  
Chambers, Ground Floor, 8, Horni  
Mody Street, 16, Mumbai Saranchar  
Mang. Fort Mumbai-400 001.  
R-55177V/C.R. 1061/01/PD/7423-16



123



- c) Pursuant to the LOA the Applicant/Consortium has promoted and incorporated a special purpose company Tuticorin Coal terminal Pvt. Ltd. ("the Concessionaire"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOA and the Concession Agreement the Concessionaire is required before hand to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. 166.08 million (Rupees one hundred sixty six decimal zero eight million only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

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

1. Capitalized terms used herein but not defined shall have the meanings assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. Tuticorin Coal Terminal Pvt. Ltd. ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. 166.08 million (Rupees one hundred sixty six decimal zero eight million only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the



31-





13:



contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. 166.08 million (Rupees one hundred sixty six decimal zero eight million only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts,

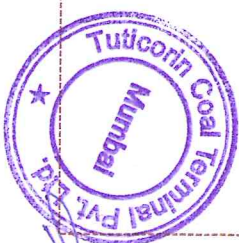






duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
- a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;
  - b. shall not be affected by any failure by the Concessioneing Authority to perform any of its obligations under the Agreement;
  - c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
  - d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
  - e. shall not be affected by any failure, omission or delay on the Concessioneing Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioneing Authority in this Guarantee;
  - f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.



12322600  
11210  
06.08.2010  
Sd/-  
Sd/-



10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under GBPA.
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of Hon'ble High Court of Madras, Madurai Bench for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessing Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.
12. Notwithstanding anything contained herein;
  - i) the Guarantor's liability under this Bank Guarantee shall not exceed Rs. 166.08 million (Rupees one hundred sixty six decimal zero eight million) only;
  - ii) this Bank Guarantee shall be valid upto 01/12/2011; and
  - iii) the Guarantor is liable to pay the guaranteed amount or any part thereof under this Bank Guarantee if, and only, if the Board serves upon the Guarantor a written claim or demand on or before 01/12/2011

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by

Punjab National Bank Bank by the hand of Shri G.K. Mohan, Sr. Manager its General Branch Power of Attorney Holder authorized official.



For PUNJAB NATIONAL BANK  
(Foreshore Road, Branch)  
Raheja Chambers,  
Nariman Point, Mumbai-400 021.

Sd/-  
23656  
Officer

Sd/-  
Sr. Manager  
11/09/2010





## B. PROFORMA OF BANK GUARANTEE FOR SUBSEQUENT YEARS<sup>40</sup>

**THIS DEED OF GUARANTEE** executed on this the ---- day of ---- at ---- by ----- (Name of the Bank) having its Head / Registered office at ----- hereinafter referred to as "**the Guarantor**" which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns; In favour of

THE BOARD OF TRUSTEES OF, TUTICORIN PORT a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Bharathi Nagar, Tuticorin – 628 004 (hereinafter referred to as "**the Board**" or "**the Concessioneing Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors and assigns.

### WHEREAS

- a) The Board, vide its Request for Proposal dated 29.05.2010 ("**the RFP**") invited duly short listed bidders to bid for implementation of a project envisaging Development of North Cargo Berth-II For Handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis more particularly described in Appendix-1 and hereinafter referred to as ("**the Project**");
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of M/s ABG-LDA Bulk Handling Pvt. Ltd. and Louis Dreyfus Aramteurs SAS ("**the Consortium**") and issued the Letter of Award No E©/F.59/11/NCB-II/2010/PD/D dated 12.08.2010
- c) Pursuant to the LOA the Applicant/Consortium has promoted and incorporated a special purpose company Tuticorin Coal terminal Pvt. Ltd. ("**the Concessionaire**"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.



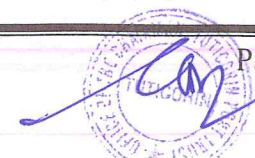
To be issued by a Scheduled Bank in India. \_\_\_\_\_ ("**LOA**") to the Consortium / Applicant requiring, inter alia, the execution of the Concession Agreement, ("**the Concession Agreement**") the draft whereof was provided in the RFP;



- d) In terms of the LOA and the Concession Agreement dated .....[.]..... entered into between the Board and the Concessionaire ("Concession Agreement"), the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. 166.08 million (Rupees one sixty six decimal zero eight million only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

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

1. Capitalized terms used herein but not defined shall have the meanings assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. Tuticorin Coal Terminal Pvt. Ltd. ("**the Concessionaire**") of all its obligations under the Concession Agreement during the Construction Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs166.08 million (Rupees one sixty six decimal zero eight million only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the



Guarantor under this Agreement. The Concessioneing Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. 166.08 million (Rupees one sixty six decimal zero eight million only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
  - a. shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;





- b. shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;
  - c. shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
  - d. shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
  - e. shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee;
  - f. shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.
10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under \_\_\_\_\_
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of Hon'ble High Court of Madras, Madurai Bench for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law,





the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

**IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS  
HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE  
WRITTEN.**

SIGNED AND DELIVERED by

\_\_\_\_\_ Bank by the hand of Shri \_\_\_\_\_ its \_\_\_\_\_  
and authorized official.



**APPENDIX 10**  
**CERTIFICATES**



### COMPLETION CERTIFICATE

1. I ] We, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the [●] Project on "Design, Build, Finance, Operate and Transfer (DBFOT) Basis", through [(Name of Concessionaire)], hereby certify that the Tests specified in Annexure of Appendix 7 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I / We am / are satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED For and on behalf of the  
INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)



*[Handwritten signature]*





### PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on Design, Build, Finance, Operate and Transfer (DBFOT) basis through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioneing Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

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



## APPENDIX 11

### PERSONNEL AND LABOUR REQUIREMENTS

The Project does not envisage taking over of any personnel / labour from the Authority.



**"Letter of Award**  
**& Acknowledgment of Letter of Award"**



தூத்துக்குடி துறைமுக பொறுப்புக் கழகம்

तूत्तुक्कुडि पत्तन न्यास  
TUTICORIN PORT TRUST

தந்தி : போர்ட்டிரஸ்ட்  
தார : पोदरु  
GRAMS : PORTRUST



மின்னஞ்சல் : info@tuticorinport.gov.in  
ई . मेल / E-Mail :  
website : www.tuticorinport.gov.in

தொலைபேசி } 2352290  
தூழ் / Phone } (50 Lines)

தொலை அச்சு } 0461-2352301  
பெக்ஸ் / Fax }

CERTIFIED UNDER  
ISO 9001 : 2000, ISO 14001 : 2004  
& ISPS COMPLIANT PORT  
CIVIL ENGINEERING DEPARTMENT / सिविल इंजीनियरी विभाग

தூத்துக்குடி - 628 004  
தூத்துக்குடி - 628 004  
Tuticorin - 628 004

E(C)/F.59/11/NCB-II/2010/PD/D. 2986

Dt. 12.08.2010

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To

M/s. ABG-LDA Bulk Handling private Limited &  
Louis Dreyfus Armaters SAS France,  
5<sup>th</sup> Floor, Bhupati Chambers,  
No.13, Mathew Road,  
Mumbai- 400 004.

INWARD No. : ABG-LDA/  
148  
DATE : 28/8/10

Sub: Development of North Cargo Berth-II for handling Bulk  
Cargoes at Tuticorin Port on Design, Build, Finance, Operate  
Transfer Basis – Letter of Award – Issue of - Reg.

- Ref: 1. Global NIT No.E(C)-F.59/11/NCB-II/RFQ/PD/D.2695  
dated 23.06.2009  
2. Your RFQ Application No. Nil dated 8.1.2010  
3. This Office letter No. E(C)-F.59/11/NCB-II/RFQ/PD/2009/  
D.1850 dated 26.5.2010  
4. Bid submitted by you vide letter No. Nil dated 6.8.2010

Dear Sir(s),

Your offer for a Gross Revenue share of 52.17% (Fifty two decimal one seven percentage) as contained in your financial Bid (4) cited for “Development of North Cargo Berth-II for handling Bulk cargoes at Tuticorin Port on Design, Build, Finance, Operate, Transfer basis” is accepted by the Concessioning Authority, the Board of Trustees of Tuticorin Port Trust, subject to the provisions contained in the Request for Qualification (RFQ), Request for Proposal (RFP) and the Draft Concession Agreement submitted by you under the Cover of letters (2) & (4) cited.

2. In line with Article 4.1 of Draft Concession Agreement document, for due performance of the obligations during the construction phase, you (herein after called the "Concessionaire") shall provide to the "Concessioneing Authority" the Performance Guarantee. The Performance Guarantee shall be either an unconditional and irrevocable Bank Guarantee in favour of the Concessioneing Authority, encashable and enforceable at Tuticorin substantially in the form as set forth in Appendix IX of Draft Concession Agreement or irrevocable revolving letter of Credit in the form acceptable to the Concessioneing Authority for a sum of Rs.166.08 (Rupees One hundred sixty six decimal zero eight) million only, prior to signing of the Concession Agreement. The Bid Security of Rs. 33.22 Million submitted along with your bid shall remain in full force and effect, till such time concessionaire provides to the Concessioneing Authority., the Performance Guarantee pursuant hereto.

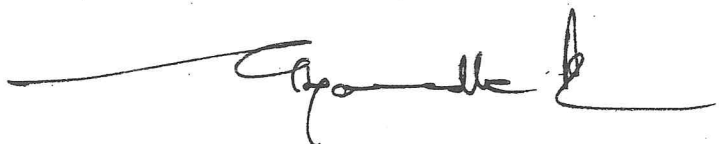
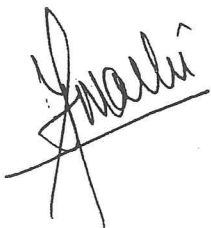
3. The Concession Agreement shall be signed within 30 days from the date of this Letter of Award.

4. In case of failure
- iv) to sign and return the duplicate copy of LOA,
  - v) to sign the concession Agreement or
  - vi) to furnish the performance Guarantee within the period prescribed therefor in the Draft Concession Agreement

within the specified time limit, the bid security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Authority under the bidding documents and/or under the Draft Concession Agreement or otherwise.

5.\* In addition, the Concessionaire shall as consideration for the use, in its' capacity as a bare licensee of the Project Site and equipment comprised in the Port's asset, made available in accordance with Article 2.4 of the Draft Concession Agreement pay to the Concessioneing Authority the Sum of Rs.12.921 (Rupees Twelve decimal nine two one) million (license fee) on yearly basis in advance. Please also note that the license fee payable each year shall be subject to Port's prevailing Scale of Rates and actual extent of the Port asset based on Joint measurements.

6. The rent and other charges for any premises or any additional utilities or services shall be payable annually during the term of the Concession Agreement as per 9.3 of Article 9 of the Draft Concession Agreement.



7. Prior to signing the Concession Agreement, you have to form a special purpose vehicle (SPV) with the shareholders/ ownership equity commitment(s) in accordance with the Request for Qualification (RFQ) & Request for Proposal (RFP) which would enter into the Concession Agreement and subsequently carry out all the responsibility as Concessionaire in terms of the Concession Agreement.

8. All provisions of the Concession Agreement read with Request for Proposal and Request for Qualification shall be duly complied with. All transactions between the Tuticorin Port Trust and the Concessionaire shall be governed by the Power of Attorney submitted with the Request for Proposal vide Appendix (iii)(Clause 2.1.9) and Appendix – iv(Clause 2.1.10)

**You are requested to return the copy of this letter of Award duly signed and stamped, as a token of acceptance of the conditions mentioned thereon and comply with the requirement specified in this Letter of Award expeditiously.**

*Recd & accepted.*

*[Signature]*

12/8/2010



Yours faithfully,

*[Signature]*  
Chairman

GURPREET \* MALHI  
CHIEF EXECUTIVE OFFICER



OUTWARD No.:	ABG-LDA/66
DATE	: 12/8/10

**ABG-LDA Bulk Handling Pvt. Ltd.**

5th Floor, Bhupati Chambers,  
13 Mathew Road, Mumbai 400 004. INDIA.  
Tel.: +91-22-6656 3000. Fax: +91-22-2364 9236  
Email: ho@abg-lda.com

Ref : ABG-LDA/P/2009/13/066/2010

Date : 12th August 2010

To  
The Chairman,  
Tuticorin Port Trust,  
Tuticorin 628004.

**Sub: Development of North Cargo Berth - II for handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate Basis - Letter of Award - Issue of - Reg**

**Ref: Your letter E(C)/F.59/11/NCB-II/2010/PD/D dated 12th August 2010**

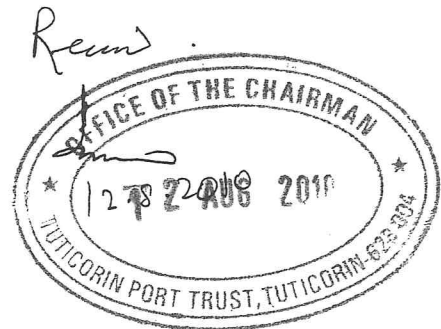
Dear Sir,

We hereby acknowledge receipt of **Letter of Award** for the Subject Project.

We are returning a copy of the **Letter of Award** duly signed and stamped.

Thanking you,  
For ABG-LDA Bulk Handling Pvt. Ltd.

Gurpreet Malhi  
Chief Executive Officer



by speed pass.  
385  
374  
TUTICORIN PORT TRUST

Grams : PORTRUST  
Phone : 2352290 (50 Lines)  
Fax : 0461 - 2352301  
E-Mail : info@tuticorinport.gov.in



Engg. Dept. (Civil)  
Administrative Office,  
TUTICORIN - 628 004.  
Web: www.tuticorinport.gov.in

CERTIFIED UNDER

ISO 9001:2000 ; ISO 14001:2004 and ISPS CODE

No. E(C) / F.59 / 11 / NCB-II / RFQ / PD / 2009 / D 2928 Dated: 4.07.2009

To

The Secretary to the Government of India,  
Ministry of Shipping, Transport Bhavan,  
1, Sansad Marg,  
NEW DELHI- 110 001.

[ Kind Attention : Smt. Geethu Joshi, Dy. Secretary]

Sub: Development of North Cargo Berth-II for Handling Bulk  
cargoes at Tuticorin Port on (DBFOT) Basis - PPPAC  
Memorandum - Reg.

Ref : 1) Ministry's Lr. No. PD-24015 / 2 / 2009 - US III Dated :  
26.05.2009.  
2) Nodal Officers workshop on PPP projects held on  
18th & 19th June, 2009 at IPA New Delhi.

Sir,

Kindly refer to the Ministry's letter cited. Tuticorin Port Trust published advertisement in the Newspaper for Global Invitation for qualification for the project of "Development of North Cargo Berth-II for Handling Bulk cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis" on 24-06-2009 and the sale of RFQ document will be commenced from 30<sup>th</sup> June, 2009.

The duly filled Memorandum for Public Private Partnership Appraisal Committee (seeking In-principal approval) for the project of "Development of North Cargo Berth-II for Handling Bulk cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis" is enclosed. A copy of feasibility report for the project has already been sent to the Ministry vide Port's letter No. E(C)/F.59/11/PD/2008/ D. 2596 Dated 16-06-2009.

Hence, it is requested that the In-Principle approval of the Government for the Project of "Development of North Cargo Berth-II for Handling Bulk cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis" under PPP mode may kindly be communicated to the Port.

Yours faithfully,

Encl.: Memorandum for PPPAC

*[Signature]*  
CHAIRMAN

DESPATCHED  
8/7/09

F.C. Compared by me

*[Signature]*  
8/7/09

**DEVELOPMENT OF NORTH CARGO BERTH- II FOR  
HANDLING BULK CARGOES AT TUTICORIN PORT.**

**MEMORANDUM FOR PPP APPRAISAL COMMITTEE  
(FOR 'IN PRINCIPLE' APPROVAL)**

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**Memorandum for PPP Appraisal Committee  
(for 'in principle' approval)**

<b>1.</b>	<b>General</b>	
1.1	Name of the Project	Development of North Cargo Berth- II for Handling Bulk Cargoes at Tuticorin Port.
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	Design, Build, Finance, Operate and Transfer (DBFOT) basis
1.3	Location (State/District/Town)	Tamil Nadu, Tuticorin District, Tuticorin Town
1.4	Administrative Ministry/Department	Ministry of Shipping,
1.5	Name of Sponsoring Authority	Ministry of Shipping
1.6	Name of the Implementing Agency	Tuticorin Port Trust, Tuticorin – 628 004, Tamil Nadu
<b>2.</b>	<b>Project Description</b>	
2.1	Brief description of the project	<p>Port of Tuticorin is located on the South Eastern Coast of India at latitude 8° 45'N and longitude 78° 13'E. The port is well sheltered from the fury of storms and cyclonic winds. It is operational round-the-clock all through the year.</p> <p>The Tuticorin Port Trust was declared as a Major Port by the Government of India in July, 1974. The Port has two operational wings viz. <i>Zone 'A'</i> comprising the new port and <i>Zone 'B'</i> constituting the old anchorage port, situated about 9 km away from the new port. Presently, <i>Zone 'A'</i> has thirteen cargo berths including ten alongside berths, one oil jetty and two coal jetties. <i>Zone 'B'</i> has only three berths, including one north coal wharf, one sheet pile wharf and one RCC jetty.</p> <p>In the North Breakwater, there are two Coal Jetties and one Oil Jetty. These two coal berths are provided with separate conveyor systems to cater to the thermal coal requirement of the existing 5 x 210 MW TTPS of TNEB. The other main bulk cargoes viz. Industrial coal, Copper concentrate, Rock phosphate(FRM), etc. are presently handled in Berth No. 3 &amp; 4.</p>

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		<p>To cater to the growing needs of power in the region, TNEB, Neyveli Lignite Corporation (NLC) and other private sector agencies are planning to develop thermal power stations in the hinterland of Tuticorin Port and certain existing industrial units are planned to expand their industries. Considering the traffic growth in near future, Tuticorin Port Trust proposes to undertake development; operation and maintenance of berth namely North Cargo Berth – II (NCB-II) for handling for Bulk cargoes at Tuticorin Port through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis. This proposal consist of the following components :</p> <ul style="list-style-type: none"> <li>(i) Construction of berth along North Breakwater for a size of 306m length and 22.90m width with a draught of 12.80m.</li> <li>(ii) Construction of conveyor system from the berth to stack yard at Hare Island to a length of 2 K.M.</li> <li>(iii) Development of stack yard with a capacity of One million Tonnes.</li> </ul>
2.2	Justification for the project	<p>Tuticorin Port has thirteen cargo berths including ten along side berths, one Oil Jetty and two Coal Jetties. The present cargo handling capacity of Tuticorin Port is 20.75 Million Tonnes, Port handled 22.01 Million Tonnes of cargo traffic during the year 2008-09.</p> <p>In the North Breakwater, there are two Coal Jetties and one Oil Jetty. These two coal berths are provided with separate conveyor systems to cater to the thermal coal requirement of the existing 5 x 210 MW TTPS of TNEB. Construction of a captive berth along the northern breakwater (NCB-1) for M/s. Neyveli Lignite Corporation Ltd. (NLC), for the proposed 2 x 500 MW capacity thermal power plant being developed at Tuticorin in Joint Venture with TNEB, is under consideration. The new plant proposed by NLC-TNEB JV will be adjacent to TNEB plants, close to the port boundary. The other main bulk cargoes viz. Industrial coal, Copper concentrate, Rock phosphate(FRM), etc. are presently handled in Berth No. 3 &amp; 4.</p> <p>There are several Private / Government organizations have proposed to set up power plants in and around Tuticorin further certain private firms are planned to expand their industries. These Private / Government organizations are requested the Port to provide dedicated berthing facilities for handling of their Bulk cargoes. As per the Master Plan of Tuticorin Port, the bulk cargo forecast for the year 2014-15 would be in the order of 19.40 MTPA which</p>

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subsequently will increase to 24.60 MTPA during the year 2027-28. In order to meet the traffic demand of bulk cargoes, It is absolutely necessary to develop the North Cargo Berth – II for handling Bulk cargoes immediately through Design, Build, Finance, Operate and Transfer basis at Tuticorin Port.

2.3 Possible alternatives, if any

Nil

2.4 Estimated Capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation.

The estimated cost of the Project is Rs.3194.50 Million. The details of Project estimate is shown below

Sl. No.	Item of Work	Estimated capital cost (in Million)
1	Civil works	856.00
2	Mechanical Works	1854.00
3	Electrical works	114.50
4	Detailed Engineering, Soil Investigation & Project Supervision	197.80
5	Contingencies	84.70
6	Works Contract Tax	73.40
7	Environment Mitigation Cost	14.10
	Grand Total	<b>3194.50</b>

2.5 Phasing of investment

First year	Rs. 638.90 Million
Second Year	Rs. 2395.90 Million
Third Year	Rs. 159.70 Million
Total	<b>Rs. 3194.50 Million</b>

866-289-378



2.6	Project Implementation Schedule (PIS)	<table border="1"> <tr> <td data-bbox="750 215 817 263">1)</td><td data-bbox="817 215 1691 263">In Principle Approval of PPPAC</td><td data-bbox="1691 215 2049 263">During July, 2009</td></tr> <tr> <td data-bbox="750 295 817 343">2)</td><td data-bbox="817 295 1691 343">Tendering for selection &amp; award of work to BOT operator</td><td data-bbox="1691 295 2049 343">July, 2009 to December, 2009</td></tr> <tr> <td data-bbox="750 406 817 454">3)</td><td data-bbox="817 406 1691 566">The BOT operator is expected to call for tender and select different contractors for carrying out the Berth Construction, Conveyor Trestle in Water &amp; Land, stack yard preparation, Mechanical and Electrical works.</td><td data-bbox="1691 406 2049 566">January, 2010 to April, 2010</td></tr> <tr> <td data-bbox="750 566 817 614">4)</td><td data-bbox="817 566 1691 614">Construction of Berth</td><td data-bbox="1691 566 2049 614">May, 2010 to September, 2011</td></tr> <tr> <td data-bbox="750 646 817 694">5)</td><td data-bbox="817 646 1691 694">Conveyor Trestle in Water &amp; Land</td><td data-bbox="1691 646 2049 694">May, 2010 to October, 2011</td></tr> <tr> <td data-bbox="750 726 817 774">6)</td><td data-bbox="817 726 1691 774">Preparation of stock yard</td><td data-bbox="1691 726 2049 774">April, 2011 to June, 2011</td></tr> <tr> <td data-bbox="750 805 817 853">7)</td><td data-bbox="817 805 1691 853">Mechanical &amp; Electrical works</td><td data-bbox="1691 805 2049 853">June, 2010 to November, 2011</td></tr> <tr> <td data-bbox="750 885 817 933">8)</td><td data-bbox="817 885 1691 933">Trial &amp; commissioning</td><td data-bbox="1691 885 2049 933">December, 2011</td></tr> </table>	1)	In Principle Approval of PPPAC	During July, 2009	2)	Tendering for selection & award of work to BOT operator	July, 2009 to December, 2009	3)	The BOT operator is expected to call for tender and select different contractors for carrying out the Berth Construction, Conveyor Trestle in Water & Land, stack yard preparation, Mechanical and Electrical works.	January, 2010 to April, 2010	4)	Construction of Berth	May, 2010 to September, 2011	5)	Conveyor Trestle in Water & Land	May, 2010 to October, 2011	6)	Preparation of stock yard	April, 2011 to June, 2011	7)	Mechanical & Electrical works	June, 2010 to November, 2011	8)	Trial & commissioning	December, 2011
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8)	Trial & commissioning	December, 2011																								
3.	<b>Financing Arrangements</b>																									
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	The total investment of the Project will be borne by the BOT Operator																								
3.2	Indicate the revenue streams of the project (annual flows over project life). Also indicate the underlying assumptions.	<p>a) All the collection on account of Pilotage &amp; Port dues will accrue to the Port Trust. In addition to the above, the Port will collect the following from the BOT operator</p> <p>(i) Upfront fee : ----- (Will be fixed by TAMP. A separate proposal is being submitted to TAMP)</p> <p>(ii) Revenue Share : From Cargo handling charges. – to be decided based on the highest revenue sharing</p>																								

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		(iii) Annual Licence Fee : For water front, storage area and way levy charges for conveyors Apart from the above dredging levy will be levied
3.3	Indicate the NPV of revenue streams with 12% discounting	The Net Present Value (NPV) at 12% discounting factor, for a Port operation period of 30 years adopting discount cash flow technique. Appendix – B showing the cash flow for calculation of FIRR is enclosed.
3.4	Who will fix the tariff/ user charges? Please specify in detail.	Tariff will be fixed by TAMP or any Competent Authority as may be stipulated in the Major Port Trusts Act, 1963 as prescribed the Government of India in future.
3.5	Have any FIs been approached? If yes, their response may be indicated	Not applicable
4.	<b>IRR</b>	
4.1	Economic IRR (if computed)	-----
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	25.18 % Details enclosed vide attachment.
5.	<b>Clearances</b>	
5.1	Status of environmental clearances	The Port has already obtained environmental clearance from the competent authority vide letter NO. 10 – 63 / 2007 – IA – III dated 13-08-2007 of MOE&F. For further clearance if any, the Port will render all possible assistance.
5.2	Clearance required from the State Government and other local bodies	Permission and licenses from the State Government, for extraction of boulders from quarry and payment charges if any to Government by the Terminal operator only.
5.3	Other support required from the State Government	---Nil---

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6.	<b>Gol Support</b>	
6.1	Viability Gap Funding, if required	Not applicable
6.2	GOI guarantees being sought, if any	---Nil---
7.	<b>Concession Agreement</b>	
7.1	Terms sheet of the proposed Concession Agreement (Attached at Appendix-A)	Attached at Appendix-A
8.	<b>Criteria for short-listing</b>	
8.1	Is short-listing to be in one stage or two stages?	Two stages. RFQ & RFP.
8.2	Indicate the criteria for short-listing (attach separate sheet if necessary)	<p>To be eligible for pre-qualification and short-listing, an Applicant shall fulfill the following conditions of eligibility:</p> <p><b>(A) Technical Capacity:</b></p> <p>For demonstrating technical capacity and experience (the "Technical Capacity"), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:</p> <ul style="list-style-type: none"> <li>(i) paid for, or received payments for construction of Eligible Project(s); and/or</li> <li>(ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2; and/ or</li> <li>(iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2</li> </ul>

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(38)



such that the sum total of the above is equivalent to the Estimated Project cost for which bids are invited i.e. **Rs. 3194.50** (Rupees three thousand one hundred and ninety-four decimal five zero) million (the "Threshold Technical Capability").

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and / or Category 3

Category 1: Project experience on Eligible Projects in port sector

Category 2: Project experience on Eligible Projects in core sector

Category 3: Construction experience on Eligible Projects in port sector

Category 4: Construction experience on Eligible Projects in core sector

**For the purpose of RFQ:**

- (i) port sector would be deemed to include marine structures, on-shore and off-shore terminals, berths, jetties, quays, cargo handling system, bulk/liquid material handling system, port based terminal facilities, CFS / ICDs, storage tanks/tank farms, conveyors, pipelines, warehousing, etc; and
- (ii) core sector would be deemed to include power, telecom, highways, airports, railways, industrial parks, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.

**(B) Financial Capacity:**

The Applicant shall have a minimum Net Worth (the "Financial Capacity") of **Rs.798.63** (Rupees seven hundred and ninety-eight decimal six three zero) million as at the close of the preceding financial year.

In case of a Consortium, the combined technical capability and net worth of those Members, who have an equity share of at least 26% each in such Consortium, should satisfy the above conditions of eligibility.

**(C) O&M Experience:**

The Applicant shall, in the case of a Consortium, include a member, having at least 26% (twenty six percent) equity participation in the Project company/ SPV, who has experience of five years or more in operation and maintenance (O&M) of Category 1 projects, with an aggregate capital cost equal to the Estimated Project Cost. In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience on its own. In the absence of such experience, the Applicant shall, for a period of at least 5 (five) years from the date of commercial operation of the Project, undertake to enter into an operations & maintenance (O&M) agreement with an entity having equivalent experience, failing which the Concession Agreement shall be liable to termination.

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		<p><b>Specific Condition</b></p> <p>(i) To avoid monopoly and promote competition, the successful bidder of the previous BOT Terminal shall not be allowed to bid for the immediate "next terminal / berth" being proposed to be bided out.</p> <p>(ii) The applicant shall guarantee to handle a minimum volume of 5 Million Tonnes of Bulk Cargoes per annum from the first year of commercial operation of the berth (or) from the beginning of fourth year from the date of signing of Concession Agreement whichever is earlier.</p>
9.	Others	
9.1	Remarks, If any	

\* \* \* \*

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### Terms Sheet of the proposed Concession Agreement

- A. Sponsoring Ministry : Ministry of Shipping
- B. Name and location of the project : Development of North Cargo Berth- II For Handling Bulk Cargoes at Tuticorin Port.
- C. Legal Consultant : Indian Ports Association, New Delhi
- D. Financial Consultant : Indian Ports Association, New Delhi

Sl. No.	Item	Description
I	General	
1.1	Scope of the project (please state in about 200 words)	<p>The facilities proposed shall consist of (a) construction of the berth (b) unloading, transporting and stacking systems and (c) development of Stack Yards on <b>DBFOT</b> basis for a concession period of 30 (thirty) years.</p> <p>(i) The proposed berth will be located along the North Breakwater on the southern side, west of the proposed berth to be constructed for NLC. The berth shall be 306 meters long and 22.9 meters wide. The berth shall be dredged by the Port for berthing 10.70m (proposed to be increased to 12.80m) draft vessels and the deck level shall be (+) 3.65 meters. Tracks of 18 meters gauge shall be laid on the berth. The berth shall be provided with the necessary bollards and fendering for berthing vessels of 75000 DWT size.</p> <p>(ii) The bulk cargoes from the ship will be unloaded using two Shore un-loaders of not less than 3600 TPH (1800TPH x 2 Unloaders). The bulk cargoes unloaded will be conveyed to the Stack yards located in Hare Island, about 2 Kms away, by a suitably designed Conveyor Systems. The bulk cargoes shall be transported from the berth through conveyors running across the sea on the Northern side of the North Breakwater to the stack yard located on the Hare Island. The bulk cargoes transported will be stacked using Stackers of commensurate capacity.</p>

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Sl. No.	Item	Description
		(iii) An area of 12.60 ha. of land for development of stack yard shall be made available in the Hare Island. The yards shall have suitable bearing capacity for a stack height of 9 meters for the cargoes having bulk density of 0.80 Ton / Sq.M and if found necessary improvements through suitable soil stabilization methods shall be carried out. The stack yards shall also be provided with parking area for trucks waiting for loading.
		(iv) All electrical works connected with the power distribution systems and all illumination works connected with the conveyor galleries, yards and buildings, etc.
		(v) Installation of dust suppression and environmental protection works including green belt, fire fighting & disaster management methods/facilities.
1.2	Nature of Concession to be granted	Design, Build, Finance, Operate and Transfer (DBFOT)
1.3	Period of Concession and justification for fixing the period	30 Years
1.4	Estimated capital cost	Rs. 3194.50 Million
1.5	Likely construction period	24 Months
1.6	Conditions precedent, if any, for the concession to be effective	As per RFP document
1.7	Status of land acquisition	Since the project is with in the Port's Limit there is no land acquisition involved.
II	<b>Construction and O&amp;M</b>	
2.1	Monitoring of construction; whether an independent agency/ engineer is contemplated	Monitoring will be done by the Tuticorin Port with an aid of independent Engineer agent selected by Tuticorin Port as per norms.
2.2	Minimum standard of Operation and Maintenance	The selected bidder is required to guarantee to handle a minimum volume of 5 Million Tonnes of coal per annum from the first year of commercial operation of the berth (or) from the beginning of fourth year from the date of signing of Concession Agreement whichever is earlier.
2.3	Penalties for violation of prescribed O&M standard	As per provisions contained in the model concession agreement will be followed.
2.4	Safety related provisions	Concessionaire to follow the Indian Dock Labour Regulations and provide adequate fire fighting requirements as per latest regulations and inconformity with the National / International standards.



Sl. No.	Item	Description
2.5	Environment related provisions	Concessionaire to comply with ISO 14001:2004 and observed requisite restriction and control as per MARPOL Convention.
III	Financial	
3.1	Maximum period for achieving financial close	24 Months
3.2	Nature and extent of capital grant/ subsidy contemplated	Nil
3.3	Bidding parameter (capital subsidy or other parameter)	Highest gross revenue share.
3.4	Provisions for change of scope and the financial burden thereof	The scope should not be changed. It should be as per the RFQ & RFP document.
3.5	Concession fee, if any, payable by the Concessionaire	Upfront fee (as indicated by the Port)
3.6	User charges/ fee to be collected by the Concessionaire	As per rates to be approved by TAMP or any Authority prescribed under the Major Port Trusts Act, 1963 by the Government of India
3.7	Indicate how the user fee is to be determined; the legal provisions in support of user fee (attach the relevant rules/ notification); and the extent and nature of indexation for inflation	To be regulated by TAMP.
3.8	Provisions, if any, for mitigating the risk of lower revenue collection	Minimum Guaranteed Traffic to be achieved as stipulated in the document. In case of failure to achieve MGT, penalty shall be calculated on Pro-rata basis for the short fall. If MGT is not achieved from the first year of commercial operation of the berth (or) from the beginning of fourth year from the date of signing of Concession Agreement whichever is earlier, it will be liable to be treated as concessionaire event of default.
3.9	Provisions relating to escrow account, if any	As per RFP document
3.10	Provisions relating to insurance	The Concessionaire shall arrange at its cost for insurance during construction, erection and commissioning of mechanical handling equipment phase such insurances as necessary. Insurance as necessary shall be arranged throughout operation period. Failure to insure will result in excising right of set off or other wise by Concessioneing Authority.
3.11	Provisions relating to audit	As per RFP document



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Sl. No.	Item	Description
	and certification of claims	
3.12	Provisions relating to assignment/ substitution rights relating to lenders	As per RFP document
3.13	Provisions relating to change in law	As per RFP document
3.14	Provisions, if any for compulsory buy-back of assets upon termination/ expiry	At the end of concession period all assets to be handed over to Tuticorin Port Trust without any changes.
3.15	Contingent liabilities of the government	
	(a) Maximum Termination Payment for Government/ Authority Default	As per RFP document
	(b) Maximum Termination Payment for Concessionaire Default	As per RFP document
	(c) Specify any other penalty, compensation or payment contemplated under the agreement	As per RFP document
IV	Others	
4.1	Provisions relating to competing facilities, if any	As per RFP document
4.2	Specify the proposed Dispute Resolution Mechanism	As per RFP document
4.3	Specify the proposed governing law and jurisdiction	As per RFP document
4.4	Other remarks, if any	As per RFP document

\* \* \* \* \*

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# CASHFLOW STATEMENT FOR CALCULATION OF FIRR OF THE PROJECT DEVELOPMENT OF NCB-II AT TUTICORIN PORT ON BOT BASIS

Appendix - B

YEAR	CAPITAL COST	ANNUAL O&M COST	TOTAL COST	FINANCIAL BENEFITS	NET BENEFITS	SENSITIVITY ANALYSIS				
						CAP.COST (+) 10%	ANNUAL O&M COST (+) 10%	REVENUE (-) 10%	COMBINED EFFECT OF ALL	(Rs. lakhs)
1	6864.00		6864.00		-6864.00	-7550.40	-6864.00	-6864.00	-7550.40	
2	25740.00		25740.00		-25740.00	-28314.00	-25740.00	-25740.00	-28314.00	
3	1716.00	2963.01	4679.01	12594.45	7915.44	7743.84	7619.14	6656.00	6188.09	
4		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
5		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
6		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
7		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
8		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
9		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
10		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
11		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
12	600.00	2963.01	3563.01	12594.45	9031.44	8971.44	8735.14	7772.00	7415.69	
13		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
14		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
15		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
16		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
17		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
18		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
19		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
20		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
21		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
22	800.00	2963.01	3763.01	12594.45	8831.44	8751.44	8535.14	7572.00	7195.69	
23		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
24		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
25		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
26		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
27	18085.00	2963.01	21048.01	12594.45	-8453.56	-10262.06	-8749.86	-9713.01	-11817.81	
28		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
29		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
30		2963.01	2963.01	12594.45	9631.44	9631.44	9335.14	8372.00	8075.69	
* 31	-21131.87		-21131.87		21131.87	23245.06	21131.87	21131.87	23245.06	
Total	32673.13	82964.28	115637.41	352644.60	237007.19	233739.88	228710.76	201742.73	190178.99	
					NPV @12%	32.997.22	30.166.40	31.111.22	24.980.68	20.263.87
					IRR	26.80%	24.42%	26.00%	23.36%	20.50%



Fax Message Inward No : 523

Dated : 10.5.10.

MOST IMMEDIATE



Secretary/Cell

Government of India  
Ministry of Shipping  
(Ports Wing)

No.PD-11015/2/2008-TPP

New Delhi-1, dated the 6 May, 2010

To

The Chairman,  
Tuticorin Port Trust,  
Tuticorin.

Sub:- Development of North Cargo Berth-II for handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) basis at an estimated cost of Rs.332.16 crores for a period of 30 years.- Approval thereof.

Sir,

I am directed to refer to your letter No. E(C)/F.79/35/DB/2008/D.4174 dated 2<sup>nd</sup> September, 2009 and subsequent correspondences on the above noted subject and to convey the approval of the Government for implementing the project "Development of North Cargo Berth-II for handling bulk cargo at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) basis for a period of 30 years" at an estimated cost of Rs.332.16 crores to be entirely financed by the prospective DBFOT operator. The project is to be completed within a period of 24 months from the date of award of concession.

2. You are requested to take further necessary action in the matter.
3. This issues with the approval of Secretary (Shipping).

Yours faithfully,

*(Signature)*  
(U.S. THAKUR)

Under Secretary to the Government of India  
Tel. No. 23358128

....2/-

REC/PD

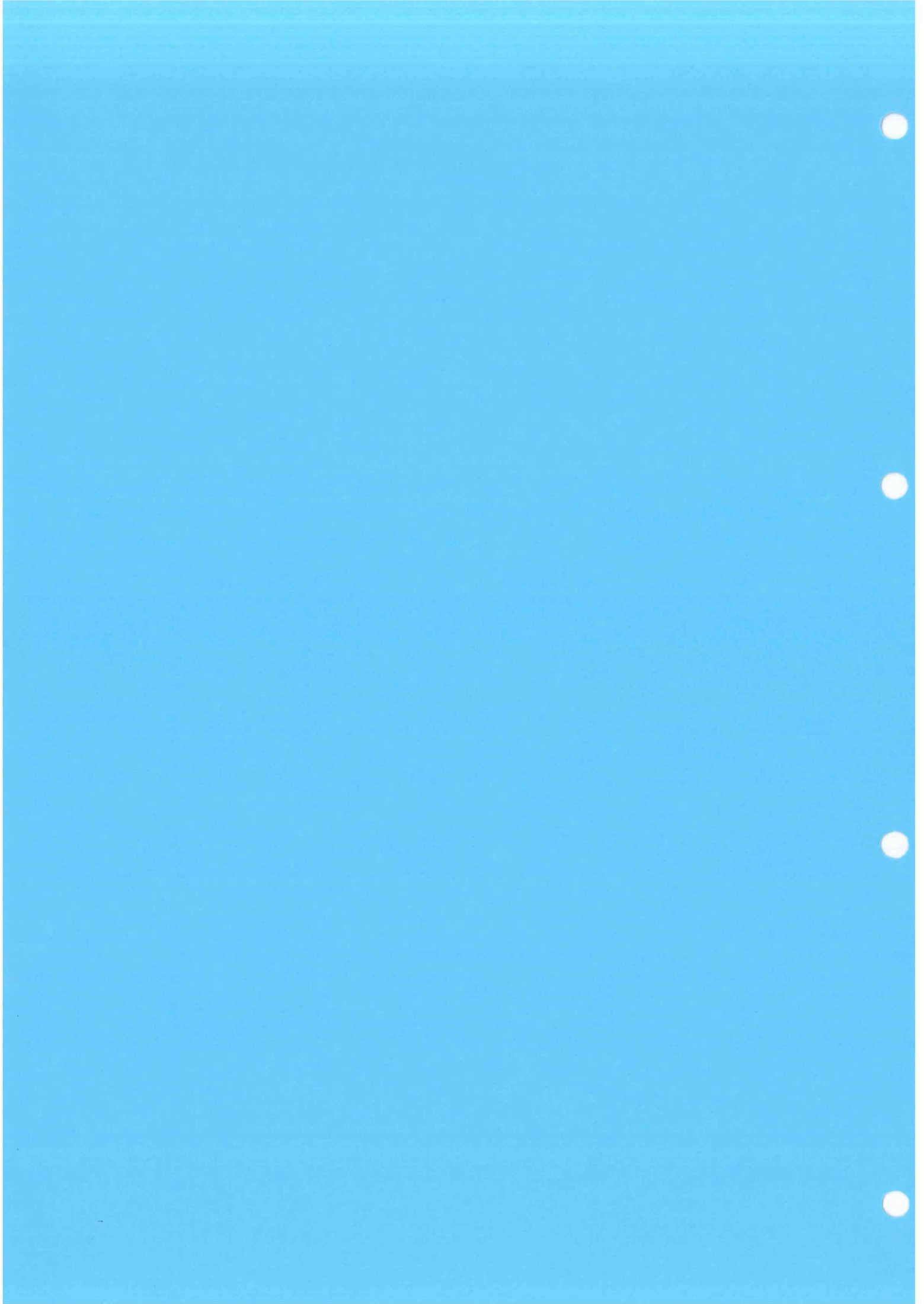
*(Signature)*  
FF/PD

*(Signature)*  
10/05

Pl. put it in Board for Informal Group. com



**"Copy of Letter Comprising the Bid"**



APPENDIX – I

**Letter comprising the Bid**

*(Refer Clauses 2.1.5 and 2.14)*

Dated: 06.08.2010

**Chief Engineer (i/c.)**  
Tuticorin Port Trust,  
Tuticorin – 628004,  
**Tamilnadu, India.**

Sub: Bid for the "Development of North Cargo Berth-II for Handling Bulk Cargoes at Tuticorin Port on Design, Build, Finance, Operate and Transfer (DBFOT) Basis"

Dear Sir,

With reference to your RFP document dated 29.05.2010, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/we acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation, and maintenance of the aforesaid Project.
4. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and we hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we / any of the Consortium Member or our / their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.







7. ~~I~~/We declare that:
- (a) ~~I~~/We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
  - (b) ~~I~~/We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document; and
  - (c) ~~I~~/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - (d) ~~I~~/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - (e) the undertakings given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and ~~I~~/we shall continue to abide by them.
8. ~~I~~/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
9. ~~I~~/We believe that we / our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
10. ~~I~~/We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/any other Consortium submitting a Bid for the Project.







11. ~~I/~~We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. ~~I/~~We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. ~~I/~~We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors / managers / employees.
14. ~~I/~~We further certify that we are not disqualified in terms of additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated 13<sup>th</sup> July, 2001, a copy of which forms part of the RFP at Appendix-V thereof.
15. ~~I/~~We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. ~~I/~~We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. ~~I/~~We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and / or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, ~~I/~~We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be.





- I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/We have studied all the Bidding Documents carefully and also surveyed the project site at Tuticorin Port. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/We offer a Bid Security of **Rs. 33.22 million** (Rupees Thirty Three decimal Twenty Two million only) to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of a ~~Demand Draft~~ Bank Guarantee is attached.
24. The documents accompanying the Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
25. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.







**ABG-LDA Bulk Handling Pvt. Ltd.**

5th Floor, Bhupati Chambers,  
13 Mathew Road, Mumbai 400 004, INDIA.  
Tel.: +91-22-6656 3000. Fax: +91-22-2364 9236  
Email: ho@abg-lda.com

26. The Gross Revenue Share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
27. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
28. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.
29. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
30. I/We hereby submit our Bid and offer Gross Revenue Share of 52.17 per cent (Fifty two point One Seven per Cent) for undertaking the aforesaid Project (Option – I) in accordance with the Bidding Documents and the Concession Agreement.

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

Date: 06.08.2010

Place: Mumbai



Yours faithfully,

(Signature of Authorised signatory)

**Rahul Thakur  
Manager**

(Name and designation of the Authorised Signatory)

**ABG-LDA Bulk Handling Pvt. Ltd.**  
Name and seal of Bidder/Lead Member







**"Copy of Enclosure Submitted as part of the  
Request for Proposal"**

**a) "Bid Security in the prescribed format"**

**b)"Power of Attorney for Signing of Bid in the  
prescribed format"**

**c) "Power of Attorney for Lead Member of  
Consortium in the prescribed format"**

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report on the state of the Union.

3. The third part is a report on the state of the Treasury.

4. The fourth part is a report on the state of the Navy.

5. The fifth part is a report on the state of the Army.

6. The sixth part is a report on the state of the Marine Corps.

7. The seventh part is a report on the state of the Coast Guard.