

# CONCESSION AGREEMENT

BETWEEN

**BOARD OF TRUSTEES FOR VISAKHAPATNAM PORT  
(THE CONCESSIONING AUTHORITY)**

AND

**VIZAG AGRIPORT PRIVATE LIMITED  
(An 'ABG-LDA' & 'IL&FS Maritime' Company)  
(THE CONCESSIONAIRE)**



FOR

**FOR INSTALLATION OF MECHANISED FERTILISER  
HANDLING FACILITIES AT EAST QUAY - 7 (EQ-7)  
BERTH IN THE INNER HARBOUR OF VISAKHAPATNAM  
PORT ON DESIGN, BUILD, FINANCE, OPERATE AND  
TRANSFER (DBFOT) BASIS**



Dated: 18<sup>th</sup> May 2012

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**DATED: 18<sup>th</sup> May 2012**

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory

सचिव  
SECRETARY Page 1

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ATTORNEY OF THE VPT BOARD  
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For VIZCAYA AGENT PRIVATE LIMITED

Authorized Signatory

*Lawyer*

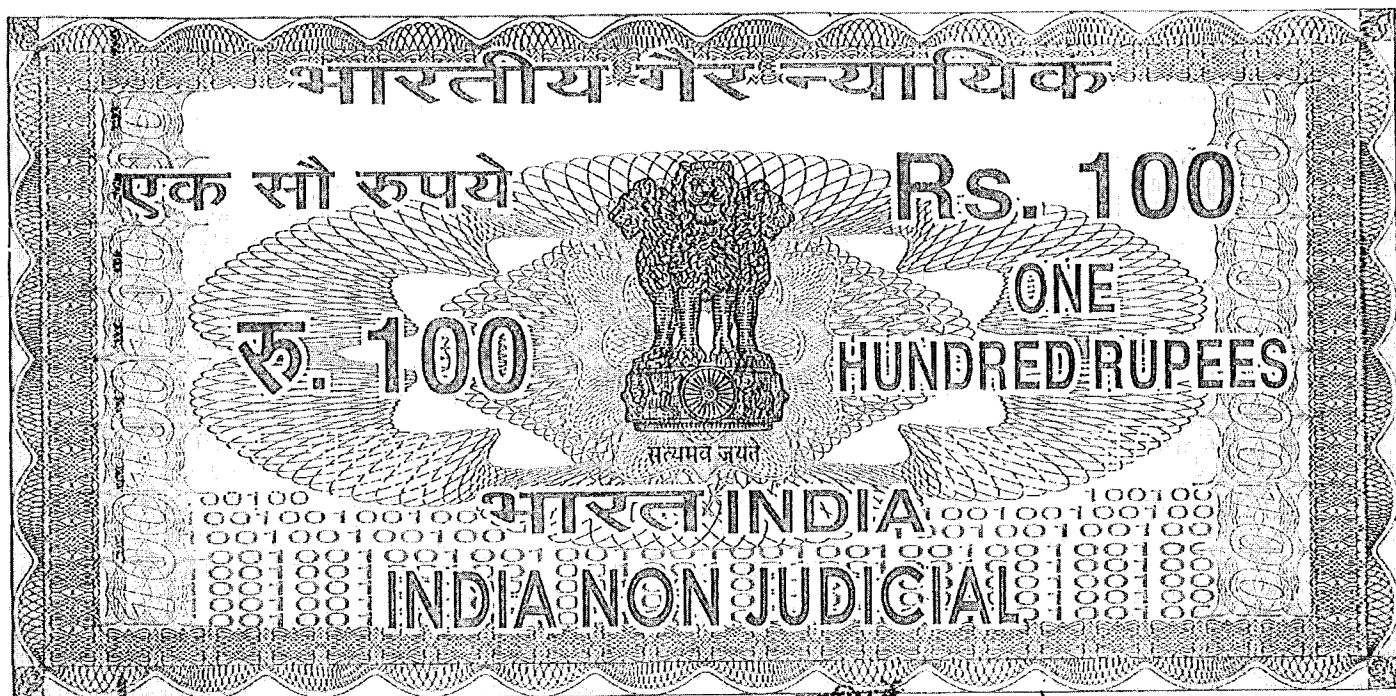
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WHEREAS:

- (A) The Concessions Authority is desirous of implementing a Project (as defined hereinafter) for planning, engineering, designing, finance, construction, development, operation & maintenance of Installation of Mechanized Fertilizer Handling facilities at East Quay – 7 (EQ-7) berth in the Inner Harbour of Visakhapatnam Port, on Design, Build, Finance, Operate and Transfer (DBFOT) basis through private sector participation;
- (B) In or about May 2010, the Concessions 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 Concessions Authority received applications from various parties including the application dated August 02, 2010 submitted by the Consortium in accordance with the Request for Qualification;
- (D) The Concessions Authority, after evaluating all the applications, shortlisted four number of applicants including the 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 Concessions Authority received only one proposal from the shortlisted applicants which is the one submitted by the Consortium;
- (F) The Concessions 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 Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated March 08, 2012;

For VIZAG AIRPORT PRIVATE LIMITED

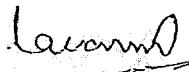
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- (G) The Consortium has incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 to implement the Project;
- (H) Following the issue of the Letter of Intent for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

For VIZAG AIRPORT PRIVATE LIMITED

Authorised Signatory

  
SECRETARY  
OF &  
MEMBER OF THE BOARD  
AIRPORT AUTHORITY OF INDIA  
VIZAG/VIAP/2012/001

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 any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, 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 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 a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

For MZAG AIRPORT PRIVATE LIMITED

Authorised Signatory

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SECRETARY  
वि.पो.ट. SECRETARY  
वि.पो.ट. & 3RD

**"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 ABG-LDA Bulk Handling Pvt. Ltd, and (ii) IL&FS Maritime Infrastructure Company Limited.

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

**"Bid Security"** means the bank guarantee no. 13940100000536 issued by Axis Bank, Worli, Mumbai dated January 27, 2012 furnished by the Consortium along with its Bid.

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



**"Book Value"** means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessions Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessions 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).

**"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 Concessions 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.

**"Concessions 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) IL&FS Maritime Infrastructure Company Limited 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 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.

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

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

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

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

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

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

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

encumbrances and encroachments on the Project Site/Port's Assets/Project Facilities and Services.

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

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

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

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

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

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

**"Estimated Project Cost"** means the sum of Rs. 2175.8 millions (Rupees Two thousand one hundred and seventy five decimal eight millions only) being the cost of the Project as estimated by the Concessions 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 Consortium have become effective and the Concessionaire has access to such Financial Assistance.

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

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

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

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

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

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

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

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

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

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

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

**"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"** <sup>5</sup> 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 [●] <sup>6</sup>

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

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

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

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

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

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

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

<sup>5</sup> The definition may be included only in cases where such a contract is envisaged.

<sup>6</sup> 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.

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

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

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

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

**"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 the Visakhapatnam Port, it is the waterfront area bounded by the coordinates 17°45'00"N/ 83°21'08.5"E, 17°45'00"N/ 83°30'21.24"E, 17°34'5.02"N/ 83°21'54.51"E, 17°38'34.83"N/ 83°15'38.25"E and notified vide Gazette Notification No. 254, dated June 03, 2003 and as amended, supplemented or replaced from time to time.

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

**"Project Capacity"** means the capacity of the Project Facilities and Services to handle 5.21 Million Tonnes of finished fertilizers and MOP per annum.

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

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

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

**"Project Schedule"** means the Appendix 5 hereto.

**"Project Site"** means the area demarcated in Appendix 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised

therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement.

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

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

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

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

“Request for Proposal” or “RFP” means the Request for Proposal dated December 31, 2010 issued by the Concessions Authority to the applicants shortlisted pursuant to the Request for Qualification and includes any addendum / clarifications issued in respect thereof by the Concessions Authority.

“Request for Qualification” or “RFQ” means the Request for Qualification under Global Tender Notice No: 2 / ICME / 2010-11 / EQ-7 dated May 12, 2010 issued by the Concessions 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 Concessions Authority.

“Requisition” has the meaning ascribed to it in Article 16.3.

“Royalty” means the gross revenue share payable by the Concessionaire to the Concessions Authority, pursuant to Article 9.2 hereof.

“Safety Standards” means the minimum standards of safety set out in the annexure to Appendix 4 with regards the Project/Project Facilities and Services.

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

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

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

**"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"** means:

- (a) maritime access channels & port entrance the entrance channel to outer harbour is 200m wide and dredged to a depth of 20m. The entrance channel to the inner harbour is dredged to a depth of (-)11.80m/ (-)12.10m.
- (b) shore protection and other protective works;
- (c) access to port for inland transport (including roads, bridges and railways); 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 notifications no. 138 dated April 30, 2010 and tariff Order No. TAMP/26/2009-VPT dated November 27, 2009 setting out inter alia the Tariff and shall include any revisions thereof.

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

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

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

**"The Port"** means Visakhapatnam 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 Reference

In this Agreement:

"ASTM" means American Society for Testing and Materials

"BIS" means Bureau of Indian Standards.

"BS" means British Standard.

"CISF" means Central Industrial Security Force.

"DIN" means German Industrial Standard.

"DWT" means Dead Weight Tonnage.

"FEM" means Federation of Equipment Manufacturers.

"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.

"MGC" means Minimum Guaranteed Cargo

"MMTPA" means Million Metric Tonnes per Annum

"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.

"SOR" means Scale of Rates of Visakhapatnam Port

"T" means tonne

"VAT" means Value Added Tax.

"VPT" means Visakhapatnam Port Trust

### 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 Measurement 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.

**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.

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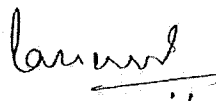
**2.7 Acceptance of the Port Assets**

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

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

## 2.8 Peaceful Occupation

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



ARTICLE 3  
**CONDITIONS PRECEDENT**

*3.1.2 Shall be complied  
within 90 days - at  
of agreement.  
i.e. on or before 18<sup>th</sup>  
of Aug-12*

**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 Concessioneing Authority under Article 3.1 (b) hereunder;

<sup>12</sup> To be retained where relevant i.e. where on the strength of the Management Contract the consortium has qualified technically.

- viii. Procuring and furnishing the following confirmations, in original, from the members of Consortium:
- (a) they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
  - (b) they have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
  - (c) 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 (A).
- xi. If required, the Concessionaire shall enter into an Integrity Pact as set out in Appendix 17 with the Concessioneing Authority as per the "Standard Operating Procedure" laid down for adoption of Integrity Pact in Major Government Departments / Organisations formulated by the Central Vigilance Commission / Government of India.

(b) The following Conditions Precedent shall be satisfied by the Concessioneing Authority:

- (i) procurement of the clearances required for the Project, as set out in Appendix 8 (B);
- (ii) handing over physical possession of the Project Site and/or the Port's Assets for the purposes of the Project;

3.2 The aforesaid Conditions Precedent shall be complied with within 90 (ninety) 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 fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioneing Authority), the Concessioneing Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of

damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioneing Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

3.5 If the Concessioneing Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil 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 Visakhapatnam, Andhra Pradesh 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. 108.80 millions (Rupees one hundred and eight decimal eight millions only). Till such time the Concessionaire provides to Concessioneing Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioneing Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 108.80 millions (Rupees one hundred and eight decimal eight millions only) is available in immediate cash to the Concessioneing Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

ARTICLE 5  
**INDEPENDENT ENGINEER**

**5.1 Independent Engineer**

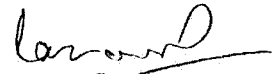
- (a) The Independent Engineer shall be selected through a tender process. The Concessioneing Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessioneing 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 Concessioneing Authority does not receive any objection from the Concessionaire with reasons therefore, the Concessioneing 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 Concessioneing Authority and Persons against whom such objections are raised will at the discretion of the Concessioneing 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 Concessioneing Authority and Concessionaire, equally.
- (d) If the Concessioneing 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 Concessioneing

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.

For  VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory



सचिव  
SECRETARY

वा. &  
वि.पो.ट. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

ARTICLE 6  
**PROJECT IMPLEMENTATION**

**6.1 Preparation of Designs and Drawings**

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

**6.2 Review of the Designs and Drawings**

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

- (e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioneing Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- (f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.
- (g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- (h) Any review of the Designs and Drawings conducted by the Concessioneing Authority is solely for the Concessioneing Authority's own information and that by conducting such review, the Concessioneing Authority does not accept any responsibility for the same.
- (i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessioneing Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof.

### 6.3 Construction Phase

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

- (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

Concessionsing Authority will not be enforceable against the Concessionsing 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 Concessionsing 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 Concessionsing Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessionsing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessionsing 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 Concessing Authority**

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessing 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 in 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;

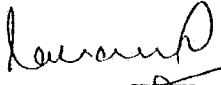
- (e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- (f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneing Authority 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning

Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessing Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

  
सचिव  
SECRETARY  
या. &  
वि.पो.ट्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

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 Concessioneing 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 lay 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 Concessioneing 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 Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

**(iii) Replacement of Equipment**

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

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

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

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

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

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

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

**(vii) Access for Inspection**

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

**(viii) Reports**

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

**(ix) Computer System and Network**

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

**(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. All labour law compliances shall be that of the Concessionaire alone.

**(xii) Minimum Guaranteed Cargo**

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

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

Notwithstanding anything contained in the MPT Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the "Action") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless

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

**(b) Rights of Concessionaire**

**(i) Preferential and Priority Berthing**

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

**(ii) Unclaimed cargo**

The Concessionaire may at its cost:

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

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

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

**(i) Marine and Port Services**

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

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

- (b) maintenance of the entrance channel draft at (-)11.80 m/ 12.10m at present and (-)13.50m and (-)16.10m in phases in future as per the deepening plans of the Concessioneing Authority.;
- (c) waterside safety and safety of navigation;
- (d) maintenance of the dredged draft alongside the berth at (-)11.80m initially and (-)13.50m and (-)16.10m in phases in future as per the deepening plans of the Concessioneing Authority;
- (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;
- (h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site ; and
- (i) evolve mutually acceptable mechanism for sharing of common costs by existing and future terminal operators.



(ii) **Approvals**

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

**7.2 Utilities and Services**

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

- (a) the power made available shall be as received by the Concessioneing Authority from **AP TRANSCO**;
- (b) the water made available shall be as received by the Concessioneing Authority from **Greater Visakhapatnam Municipal Corporation (GVMC)**. The take off point for water shall be the nearest available water line;
- (c) the Concessionaire shall, at its cost, and to the satisfaction of the Authority, install meters to measure the consumption of power and water. The Concessioneing Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;
- (d) The Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, thereof.

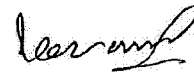
**7.3 Liability for shortfall in performance**

In the event the Concessioneing Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioneing Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 15 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioneing Authority which shall be considered by the Concessioneing Authority on merits and the Concessioneing Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

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

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory



सचिव  
SECRETARY

वा. &  
वि.पो.द्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

## ARTICLE 8

### TARIFF

#### 8.1 Levy and Recovery of the Tariff

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

8.1.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or other relief from the Concessioneing Authority or any Government Instrumentality, except in accordance with the express provisions of Agreement. The Concessionaire further acknowledges and here by accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff order issued by TAMP and agrees that the Concessioneing 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 Concessioneing Authority, on behalf of the Concessioneing Authority and remit the same to the Concessioneing Authority. Provided, the Concessionaire shall be duly authorized by the Concessioneing Authority or such other authority as may be competent in this regard, for the purpose of such collection.

## ARTICLE 9

### PAYMENTS OF THE CONCESSIONING AUTHORITY

#### 9.1 License Fee

- (a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioning Authority the sum of Rs. 55.59 millions (Rupees fifty five decimal five nine millions only) as specified in the bid documents (the "License Fee") towards annual lease rental for the extent of land measuring 28.48 acres for the development of stack yard (including handling facilities) with an escalation of 2% per annum.

The Concessionaire shall pay such License fee in advance every year till the end of license period as per schedule of rates prevailing from time to time and first of such payments to be made on MMM DD, YYYY. In addition to the above, the Concessionaire shall pay for the above land, one year license fee of Rs. 55.59 millions (Rupees fifty five decimal five nine millions only) as aforesaid as non-refundable premium (one time payment) and 5 (five) years license fee of Rs. 277.95 millions (Rupees two hundred and seventy seven decimal nine five millions only) as refundable security deposit which can be in the form of Bank Guarantee.

The present applicable rates in respect of land utility and services are as per Appendix 13.

- (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 Concessioning Authority Royalty per Month equivalent to 21.25% (twenty one decimal two five percent) of the Gross Revenue chargeable by the Concessionaire ("the Royalty").

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

### 9.3 Utilities and 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 the Schedule of Rates in respect of land and twice the Scale of Rates for all other utilities and services 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 Concessioneing Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

#### 9.5 Escrow Account

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

- (a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Account shall be in the following order of priority:
- (i) for all taxes due and payable by the Concessionaire;
  - (ii) towards payment of License Fee;
  - (iii) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
  - (iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

- (v) towards its debt service obligations under the Financing Documents;
- (vi) towards payment of Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
- (vii) towards any reserve requirements in accordance with the Financing Documents;

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

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

- (i) towards taxes and statutory dues payable by the Concessionaire;
- (ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (iii) all amounts due to the Concessioneing Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement;

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



ARTICLE 10

**ASSETS: OWNERSHIP AND PERMITTED CHARGE**

**10.1 Ownership of Assets**

**(a) Land and Water Area**

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

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

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

## 10.2 Permitted Charge on Assets

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

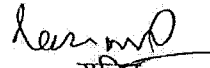
Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the Port's Assets.

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

For VIZAG AGRIPORT PRIVATE LIMITED



Authorised Signatory



सचिव  
SECRETARY

वा. &  
वि.पो.द्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

## ARTICLE 11 SHAREHOLDING

### 11.1 Ownership Structure

The 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 below:

- |   |     |
|---|-----|
| • ABG-LDA Bulk Handling Private Limited         | 74% |
| • IL&FS Maritime Infrastructure Company Limited | 26% |

### 11.2 Shareholding

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

- (a) The 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 Private Limited ("Lead Member") legally and beneficially holds at any time not less than 26% (twenty six 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.

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 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 Concessioneing 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 Concessioning Authority.

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

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

**(f) Engagement of Contractors**

The Concessionaire 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. 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 the Concessionaire intends to engage;
  - (iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioneing Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
  - (iv) any contract that it enters with an Affiliate in respect of the Project shall be on an arms length basis.
- (g) **Condition Survey**
- (i) The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioneing Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any

defect or deficiency. The Concessioneing Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.

- (ii) The Concessionaire shall as security for performance of its obligation in the preceding sub-article (i), provide/submit to the Concessioneing Authority a guarantee issued by a scheduled bank in India for a sum of Rs 108.80 millions (Rupees one hundred and eight decimal eight millions 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.

## 12.2 Of the Concessioneing Authority

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

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

**(b) Taxes and Duties**

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

**(c) Competing Facilities**

The Concessioneing Authority shall not operationalise any additional facility within Port Limits for handling fertilisers 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 below.

- (i) Development of Western Quay – 8 (WQ-8) berth including mechanized handling facilities in the northern arm of inner harbour of Visakhapatnam Port for handling Alumina, Caustic Soda and other bulk cargo on DBFOT basis.
- (ii) Development of Eastern Quay – 10 (EQ-10) berth in the northern arm of inner harbour of Visakhapatnam Port for handling caustic soda lye, edible oil, chemicals and other liquid cargo on DBFOT basis.
- (iii) Development Western Quay –7 (WQ-7) berth including mechanical handling facilities in the Northern arm of inner harbour of Visakhapatnam Port for handling of bulk cargo including Alumina, Caustic Soda and related cargo on DBFOT Basis.

- (iv) Development of Eastern Quay – 1 (EQ-1) berth by replacing the existing EQ-1 berth and part of EQ-2 berth for handling steam coal in the inner harbour of Visakhapatnam port on DBFOT basis.
- (v) Development of East Quay – 1A (EQ-1A) berth on South side of EQ-1 berth for handling Thermal coal and Steam coal in the inner harbour of Visakhapatnam Port on DBFOT basis
- (vi) Development of WQ-6 berth in the northern arm of inner harbour of Visakhapatnam Port for handling dry bulk cargo like C.P.Coke, LAM Coke, Steel and Granite blocks on DBFOT basis.
- (vii) Mechanization of Coal (Steam coal and coking coal) handling facilities and upgradation of General Cargo berth (GCB) at outer harbour of Visakhapatnam Port to cater to 200,000 DWT vessels on DBFOT basis.
- (viii) Proposed modernization and upgradation and of existing Ore Handling Complex of Visakhapatnam Port for handling different grades of iron ore and pellets to on DBFOT basis.
- (ix) Mechanization of West Quay – 1 ( WQ-1) for handling Iron ore in Inner harbour of Visakhapatnam port on DBFOT basis.

Further, importers importing fertilizer cargo shall bring vessel only to the mechanized berth (EQ-7). In case of its preoccupation, then only the choice falls on the importer of cargo for next vessel whether to wait for this berth or unload at other berth.

**(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.

- (e)** The Concessioneing Authority at the discretion of the Central / State Government may induct CISF or such other force as the Central / State Government decides whenever necessary for security in the Project Site / Project Assets at the cost of the Concessioneing Authority

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

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

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

**(b) Rights to Documents**

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

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

**(ii) Concessionaire's Documents**

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

**(iii) Confidentiality**

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

**(iv) Obligation to Cooperate**

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

**(v) Substitution Agreement**

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



ARTICLE 13  
**CHANGE IN LAW**

13.1 **Change in Law**

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

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

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iii) any rules or regulations stipulated by TAMP or other regulatory

authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

**13.2 The Concessionaire's Remedy**

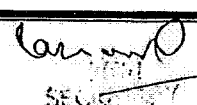
- (a) In the event of Change in Law the Concessionaire may propose to the Concessioneing Authority modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.
- (b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 108.80 millions (Rupees One hundred and eight decimal eight millions only) may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost upto Rs. 108.80 millions (Rupees One hundred and eight decimal eight millions 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;

- For VIZAG PORT PRIVATE LIMITED

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. 152.31 millions** (Rupees One hundred and fifty two decimal three one millions) 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 Concessioneing 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 Cost, Revised Timetable

(a) Costs

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


(b) Extension of time/period

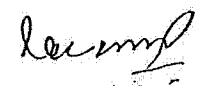
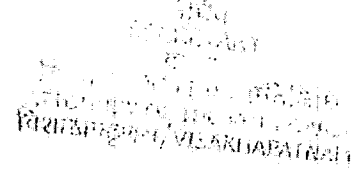
The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the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

For VIZAG AGRIPORT PRIVATE LIMITED

  
Authorized Signatory

  
  
VIZAG AGRIPORT PRIVATE LIMITED  
VIZAG AGRIPORT PRIVATE LIMITED  
VIZAG AGRIPORT PRIVATE LIMITED

ARTICLE 15

**EVENTS OF DEFAULT**

**15.1 Events of Default**

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

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

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

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

## 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 Concessioneing Authority's Rights of Step-in**

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

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

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

  
~~SECRETARY~~  
SECRETARY  
VIZAG AIRPORT BOARD  
VIZAG AIRPORT BOARD  
VIZAG AIRPORT BOARD

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 Concessioning 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 Concessioning Authority shall by a notice in writing ("Requisition") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely compensation payable





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:

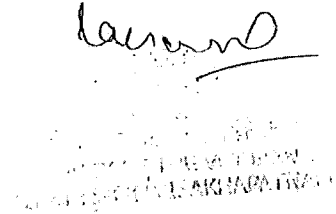
- (a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;
- (b) the Concessioneing Authority shall be entitled 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.

For VIZAG AGRIPORT PRIVATE LIMITED



Authorised Signatory



## 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.

For VIZAG AIRPORT PRIVATE LIMITED

  
Authorised Signatory



सचिव  
SECRETARY  
वा. &  
वि.पो.द्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE AIRPORT  
विशाखपट्टणम/VISAKHAPATNAM



**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 Obligation**

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 Concessioning 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 Concessioning 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 Concessioning Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being

transferred to the Concessioneing Authority; and (iii) those the Concessioneing Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioneing Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessioneing Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessioneing Authority;

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

### **18.3 Concessioneing Authority's Obligations**


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

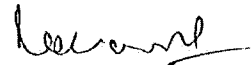
The Concessionaire further confirms that payment of compensation by Concessioning Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessioning Authority in respect of Concessioning Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

**18.4 Risk**

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

**For VIZAG AIRPORT PRIVATE LIMITED**

  
**Authorised Signatory**



18.05.2012  
ATTORNEY OF THE VIZAG AIRPORT PRIVATE LIMITED  
PILAKOTA/VIAPRVT

**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.

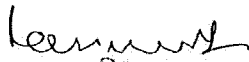
**(f) Fees and Expenses**

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.

  
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SECRETARY  
वा. &  
वि.पो.द्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

ARTICLE 20

**REPRESENTATION AND WARRANTIES**

**20.1 Representation and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Concessing 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 0.80 m below mean sea level or such levels as notified by the Concessions Authority from time to time.

#### 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 Concessions 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 Concessioning Authority:

CHAIRMAN

Visakhapatnam Port Trust,  
Port Area, Visakhapatnam – 530035  
Phone: 0891- 2876001  
Fax: 0891- 2565023

The Concessionaire:

The DIRECTOR

Vizag Agriport Private Ltd  
5<sup>th</sup> Floor Bhupati Chambers, 13 Mathew Road  
Mumbai – 400 004  
Fax No: 022-2368 3165  
E-mail: [ho@abg-lda.com](mailto: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**

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.

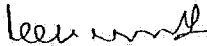
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the dates indicated next to their signatures below:

Common Seal of the Concessioneing Authority is affixed pursuant to its Agenda Item No. S-19, resolution no. 148/2011-12, Meeting No.5/2011-12 dated February 24, 2012 of the Board of Trustees of Visakhapatnam Port Trust in the presence of Mr. D. Naresh Kumar who has signed this Agreement in token thereof.

Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. Gurpreet Malhi pursuant to Resolution dated 26<sup>th</sup> April 2012 of its Board of Directors.

For VIZAG AIRPORT PRIVATE LIMITED

Authorized Signatory



SECRETARY

वि.पो.ट्र. बोर्ड का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

APPENDIX 1

**PROJECT SITE**

**1.0 SITE INFORMATION**

**1.1 GENERAL**

The Concessionaire should also ascertain and satisfy themselves about the details and the data furnished on meteorological, geological, sub-soil and other conditions. If any error or deficiency in the information supplied surfaces at any time during the currency of the Concession Period, no claim on this account will be entertained by the Concessioning Authority.

**1.2 THE SITE**

The Visakhapatnam port is located in the city of Visakhapatnam, Visakhapatnam District, State of Andhra Pradesh on the East Coast of India and lies on Latitude 17°-42'N and Longitude 83°-18' E. The EQ-7 berth mechanization is proposed to be provided by extending Northern arm in the Inner Harbour of Visakhapatnam Port Trust in between EQ-6 and EQ-8 berths as shown in drawing No. IPA/VPT/FERT/5.03

**1.3 AVAILABILITY OF LAND**

The Land for establishment of the identified facilities shall be provided by the Concessioning Authority out of Visakhapatnam Port Trust land on prevailing license terms and Schedule of Rates as applicable from time to time. However, roads, telephone lines, power, water and any other lines, drains etc. passing through this area have to be diverted by the Concessionaire at its own cost.

**1.4 METEOROLOGICAL DATA**

**WIND:**

The predominant direction of wind is south – west and north-east for the most of the time and wind speed does not exceed 20 KMPH for 90% of the time. The maximum wind speed recorded is 110 KMPH.

#### SEA WATER TEMPERATURE & SALINITY:

The sea water temperature at Visakhapatnam Coast varies from a mean of about 25<sup>o</sup> C in January to 29<sup>o</sup> C in October. The salinity varies from a monthly mean of about 24.4% in November to a monthly mean of 34% in April.

#### 1.5 SUB-SOIL CONDITIONS

A good number of boreholes were undertaken in the past through reputed agencies at the time of construction of various developmental works of the Port. Recently, boreholes were also taken by in the east cargo dump area. Based on the soil investigations carried out, the back-up area of inner harbour berths is in the reclaimed areas and the top soil comprise of fine dredged sand followed by soft clay of reasonably low strengths upto about (-) 17.0m and thereafter still clay followed by soft rock and hard rock. Hard rock is generally known to be met at depths of about (-) 28.0m from ground surface. At R.11 area rock is seen to be met at about (-) 9.2m. Site specific soil investigations are necessary for undertaking detailed engineering. Typically soil profile pertinent to the project proposal is furnished at *Drawing Nos. 3.02 and 3.03.*

In the event that should the Concessionaire desires to array out any soil explorations either prior to or after submission of the bid, permission shall be granted by Concessioning Authority. In all such cases, the soil exploration shall be arranged by the Concessionaire at its own cost without causing any inconvenience to the works/ operations of Visakhapatnam Port Trust/ other agencies working in the area. Further, the detailed designs to be undertaken by the Concessionaire shall be based on proper soil exploration conducted at the Site before hand and no claim on this account will be tenable. The Concessionaire shall carry out the soil investigation along the length of the Quay/ obtaining data as per provisions container in relevant Bureau of Indian Standards with soil boring at 50 Meters interval so as to adhere to the design requirement.



#### 1.6 DATUM

The datum to which all levels shall be referred for the purpose of the works is the Chart Datum, which is 0.80 Meters below MSL.

#### 1.7 CLIMATE

The annual mean maximum temperature is 31°C and the annual mean minimum temperature is 24°C. The highest temperature recorded is 44.4°C and the lowest temperature recorded was 12.8°.

The rainy season persists mainly during the southwest monsoon and slightly before and after that period. September and October are the wettest months of the year with average rainfall of 167.3 mm and 259.3 mm respectively. The average annual rainfall is about 973.6 mm. The average number of rainy days per annum is 50.

The annual mean value of daily relative humidity recorded varies from 72% to 76%. The highest recorded value is 81% and lowest recorded value is 64%.

#### 1.8 WAVES

The deep-sea wave conditions are in agreement with the wind directions in this area. The predominant direction of waves during the period April–September is South–west whereas during the period November – February the predominant direction is North-east. The months of March and October are transition periods with no definite predominant direction for the wave approach. Waves of over 1.5 M in height may be expected outside the outer harbour for approximately 22% of the time and wave periods of over 7 seconds may be expected approximately 14% of the time.

#### 1.9 TIDES

The table gives the tide levels with reference to the Indian Naval Hydrographic Chart Datum

**TABLE**  
**TIDE LEVELS**

Highest high water recorded (Nov. 2007)	-	+ 2.06 M
Mean high water level spring (MHWS)	-	+ 2.06 M
Mean high water level neap (MHWN)	-	+ 1.50 M
Mean sea level (MSL)	-	+ 0.80 M
Mean low water level neap (MLWN)	-	+ 0.50 M
Mean low water level spring (MLWS)	-	(-) 0.16 M
Chart datum (CD)	-	0.00 M
Lowest low water recorded (March 2007)	-	(-)0.39 M

Note: During the 'tsunami' that occurred in December 2004 the max. & min. levels of sea water have varied between a max. of +3.0 m to a min. of -1.0m.

**1.10 CURRENTS:**

Currents in the Bay of Bengal are seasonal and are mainly due to South-west and North-east monsoons. From February to June offshore currents flow toward the North-east and from August to December towards South-west at velocities ranging from 0.5 to 1.0 Knot in the Outer Harbour.

**1.11 VISIBILITY:**

Visibility is good throughout the year as fog is in-frequent at sea in all seasons. Reduction in visibility is mostly due to heavy rainfall during the South-west monsoon. The highest monthly average duration recorded fog is 0.1 day in some months from December to May.

**1.12 CYCLONES:**

The average number of cyclones occurring at Visakhapatnam is 4 to 5 per year. Cyclone Storms and depressions occur with great frequency in August, October and November.

**1.13 LITTORAL DRIFT:**

Littoral drift of the order 0.56 million  $m^3$  from south to north during the south-west monsoon and of the order of 0.10 million  $m^3$  from north to south during the north-east monsoon, resulting in a net northerly drift of the order of 0.50 million  $m^3$  is known to exist annually at Visakhapatnam. A sand trap is incorporated in the layout of the outer harbour on the lee side of the south breakwater to facilitate collection of the sand drift. During annual maintenance dredging, the sand from the sand trap is dredged and about 0.4 million  $m^3$  of sand is annually placed on the shore north of the outer harbour to contain the littoral drift.

**2.0 EXISTING BERTHS:**

The schematic details of the existing berths and approaches are shown in drawing enclosed in TEF. The inner harbor has 18 berths and the outer harbor has 6 berths. There are proposals to construct additional berths in the inner harbor and outer harbor.

For VIZAG AIRPORT PRIVATE LIMITED

Authorised Signatory

SECRETARY

ATTORNEY OF THE VIZAG AIRPORT PRIVATE LIMITED  
VIZAG AIRPORT PRIVATE LIMITED

APPENDIX 2

**PORT'S ASSETS**

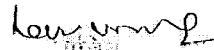
1. The existing EQ-7 berth including water front of the berth with the existing draft alongside the berth,
2. The required area of land in the R-11 for the development of the stack yards including handling facilities, conveyor corridor, railway tracks and office & operational buildings is about 1,15,287 Sq. m (Acs 28.48). The annual lease rentals for the land as per Schedule of Rates in force shall be payable by the Concessionaire to Concessioneing Authority for this land.

NOTE:

- i) There may be marginal adjustments in the area proposed to be provided to the Concessionaire depending on the actual site conditions.
- ii) The payment of upfront fee & License Fee for the above assets to be made by the Concessionaire to the Concessioneing Authority are indicated in relevant Articles / Appendices of this Concession Agreement.

For VIZAG AGRI-PORT PRIVATE LIMITED

Authorised Signatory





APPENDIX 3

**SUBSTITUTION AGREEMENT**

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

AMONGST,

THE VISAKHAPATNAM PORT TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Visakhapatnam, Andhra Pradesh (hereinafter referred to as “the **Concessing Authority**”) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. Vizag Agriport Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at ----- hereinafter referred to as “the **Concessionaire**” (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----  
----- hereinafter referred to as “the **Lender**”.

OR

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

WHEREAS,

- a) The Concessioneing Authority for implementing a Project envisaging installation of mechanized fertilizer handling facilities at East Quay – 7 (EQ-7) Berth in the Inner Harbour of Visakhapatnam Port 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”) has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;
- b) With a view to facilitate financing of the Project by the Concessionaire, the 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 Concessioning Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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

For VIZAG AIRPORT PRIVATE LIMITED

Authorised Signatory

सचिव  
SECRETARY

वि.पो.६, अहमदाबाद  
ATTORNEY  
विराटपुर

**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 Substitution upon occurrence of Financial Default**

3.2.1 Upon occurrence of a Financial Default, the Lenders/Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the 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 fulfil 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 Concessioneing Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Concessioneing Authority taken pursuant to this Agreement including the transfer/novation of the Concession Agreement in favour of the Selectee. The Concessionaire agrees and confirms that it shall not have any right to seek

revaluation of assets comprised in the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders/Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioneing Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioneing Authority or the Lenders/Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders/Lenders' Representative.

#### **ARTICLE 4**

#### **TRANSACTION DOCUMENTS**

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

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

#### **ARTICLE 5**

#### **TERMINATION OF CONCESSION AGREEMENT**

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

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

**5.2 Termination when no Selectee is selected**

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

**5.3 Realisation of Debt Due**

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

**ARTICLE 6**

**DURATION OF THE AGREEMENT**

**6.1 Duration of the Agreement**

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

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

**ARTICLE 7**

**INDEMNITY**

**7.1 General indemnity**

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Lenders/Lenders' Representative harmless against any

and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

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

## 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not

to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## ARTICLE 8 GENERAL

### 8.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- (iii) The expressions "Concessioning Authority", the "Concessionaire", the "Lender" and the "Lenders' Representative", "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- (iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Lender or Concessioning Authority shall have the benefit of this Agreement.
- (v) Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be

appointed by the Concessioneing Authority and the Lenders/Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

- (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



- (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.

### 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 ON BEHALF OF -----  
LIMITED

## Title

SIGNED AND DELIVERED ON BEHALF OF

GOVERNMENT OF INDIA

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

Name :

Title :

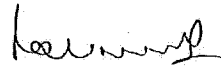
SIGNED AND DELIVERED ON BEHALF OF ----- ON BEHALF OF  
THE LENDERS SETFORTH IN SCHEDULE I BY :

\_\_\_\_\_  
Name :

For VIZAG AIRPORT PRIVATE LIMITED



Authorized Signatory



सचिव  
SECRETARY

वा. &  
वि.पो.द्र. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

APPENDIX 4

**PROJECT REQUIREMENTS**

**Project Facilities and Services:**

The project requirements are as explained in detail in the TEFRR, which is an enclosure to the RFP document. However, the Concessionaire on their own shall submit the scheme and design of the Project as per the Clause No.1.1.3 of RFP document. Brief scope of the project includes planning, designing, engineering, financing, construction, management, operation and maintenance of the project, project facilities and services

**Civil and structural works:-**

- a) Hopper Track behind Berth 255m.
- b) Conveyor gallery comprising of RCC M30 Piles foundation, Structural Steel supports, structural steel gallery with one side walk way, ACC sheet cladding roof.
- c) Silo farms including necessary foundations, Bagging Plant & Storage Sheds.
- d) Truck Parking including necessary Area development.
- e) Transfer Towers and Drive Houses.
- f) Dismantling of railway tracks & Railway tracks formation and rail platform.
- g) Formation of peripheral service roads, Operational Buildings & Surface drainage.
- h) Necessary Geo-technical Investigations.
- i) Dust suppression system and dust extraction system.
- j) Green plantation and perimeter walls.
- k) Water supply.
- l) Any other measures as per the prevalent Environmental regulations / Requirements.

Planning, design, engineering, installation, operation and maintenance of all developmental works shall comply to the relevant Indian Standards and in the absence of Indian standards, relevant International Standards shall be complied with. List of

construction, operation & maintenance are annexed to this Article. In the absence of both, the Concessionaire shall follow good industry practice. Safety precautions, as per statutory requirements, shall be complied with. The concessionaire shall ensure compliance to Standards under ISO 9001, ISO 14001 & ISO 18001 pertaining to Quality, Environmental, Occupational Health and Safety respectively and ISPS Codes. The performance standards shall generally comply as set out in Appendix-15.

On the Date of Commercial Operations, the berth shall be equipped with equipment with capacity to handle 25,000 TPD (Twenty five thousand) cargo.

The personnel and other related facilities should be capable of handling 25,000 TPD cargo in accordance with the Performance Standards set out in Appendix 15.

**Mechanical system equipment:**

- a) Ship unloader Gantries : 2 X 800 TPH with 35 Tonnes Grab
- b) Unloading Conveyor system (3.08 KM long) designed for the lowest fertilizer density of 0.80 MT per cum.  
Width of conveyor – 1200mm. Belt speed – 4 mt per second.
- c) Scraper Reclaimer : 2 Nos.
- d) Front end loaders : 8 Nos.
- e) Transport & stacking conveyor as detailed in TEFR at Section 6.
- f) Automatic Bagging plant with an installed capacity of 8400 TPD, Bagging Machines with feeding hoppers, Transport conveyor, Stitching Machine and Feeding conveyor.
- g) Associated electrical works.

**SECURITY CLAUSE:**

The Concessionaire shall at all times during the Concession Period obtain clearance from Concessioneing Authority before employment/ deployment of personnel of foreign nationality and sourcing of equipment from foreign countries.

Annexure

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

**A. General**

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

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

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

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) and shall also obtain accreditation for operations at the terminal. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

It is not intended to specify herein all the relevant standards required to complete the Project. Such of those standards considered more pertinent are listed in this Annexure.

**B. Civil Construction Work**

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

The civil construction work may comprise variety of works such as dredging, reclamation, construction of breakwaters, berths, development of back-up area for storage and handling of bulk cargo, approach roads, railways sidings, operational buildings/offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by him meets not only the functional requirements of the project but also conforms to the required quality as per the standards. In addition, the Concessionaire shall also comply with the provisions of specifications published by the Indian Road Congress, RDSO of Ministry of Railways and provisions of Shore Protection Manual (CERC) of US Army Corps of Engineers, as may be pertinent to the Project. In respect of implementing the Project, the Concessionaire shall refer to and as relevant comply with the design and construction standards specified in the following paragraphs.

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

IS 4651 – Part – 1 – 1974	Code of practice for planning and design of ports and harbours: Part 1 Site investigation
IS 4651–Part 2–1989	Code of practice for planning and design of ports and harbours Part 2 Earth pressure
IS 4651-Part III-1974	Code of practice for planning and design of ports and harbours: Part III: Loading
IS 4651- Part 4 -1989	Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.
IS 4651-Part 5-1980:	Code of practice for planning and design of ports and harbours Part: 5 Layout and functional requirements
IS7314: 1974	Glossary of terms relating to port and harbour engineering
IS 9527: Part 1: 1981	Code of practice for design and construction of port and

	harbour structures: Part 1 Concrete monoliths
IS 9527: Part 3: 1983	Code of practice for design and construction of port and harbour structure: Part 3 Sheet pile walls
IS 9527: Part 4: 1980	Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures
IS 9527: Part 6: 1989	Code of practice for design and construction of port and harbour structures: Part 6 Block work
IS 10020: Part 4: 1981	Recommendations for design and construction of port and harbour components Part 4 Slipways
IS 9556: 1980	Code of Practice for design and construction of diaphragm walls

*Indian Standards for Foundation Work*

IS 2911: Part 1:Sec 1:1979	Code of practice for design and construction of pile foundations Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles
IS 2911: Part 1: Sec 2:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 1:Sec 3:1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles
IS 2911: Part1: Sec 4:1984	Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 2: 1980	Code of practice for design and construction of pile foundations: Part 2 Timber piles
IS 2911: Part 3: 1980	Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.
IS 2911: Part 4: 1985	Code of practice for design and construction of pile foundations: Part 4 Load test on piles
IS 2950: Part 1: 1981	Code of practice for design and construction of raft foundations – Part I: Design
IS 2974: Part 1: 1982	Code of practice for design and construction of Machine Foundations- Part 1: Foundation for Reciprocating Type

	Machines.
IS 2974: Part 2: 1980	Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)
IS 2974: Para 3: 1992	Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)
IS 2974:: 1979	Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary 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.



## B-2 Bulk Liquid Terminals and Tank Farms

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

## C Cargo Handling Equipment

### C-1 General

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

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

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

#### *Structures and Mechanism*

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

#### *Material*

IS 800: 1984	Code of Practice for general construction in steel
IS 2062: 2006	Hot rolled low medium and high tensile Structural Steel
IS 2644: 1994	High tensile steel castings

IS 2266: 2002 Steel Wire Ropes for General Engineering Purposes-  
specification

IS 3177:1999 Code of Practice for Electric Overhead Traveling Cranes  
and Gantry Cranes other than Steel Work Cranes

#### Electricals

IEC standards

IEE – regulations for the electrical equipment of buildings

BS 4999 / FEM 3rd edition Booklet 4 - Motors

BS 171, BS 3941, BS 3938 - Transformers

BS 99 - Fuses

#### Welding

IS 7307: Part 1: 1974 Approval test for welding procedures Part 1 Fusion  
welding of steel.

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

#### Painting

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

#### General

IS 13367:Part 1: 1992 Safe use of Cranes - Code of Practice Part 1 General

#### Classification of Crane Structures

Class of utilization: U8 (4 Million loading cycles)

State of loading: Q3

Group classification: A8

Impact factor: 1.4

Duty factor: 0.9

Nominal load spectrum: 0.8 of rated capacity factor

#### Mechanism

Class of Utilization State of Loading Group Classification

Hoist

T8

L3

M8

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

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

### C-3 Mobile Equipment

IS 4357: 2004	Methods for Stability Testing of Fork Lift Trucks
IS 4573: 1982	Specification for Power Driven Mobile Cranes
IS 13473: Part 2:1992/	Cranes - Vocabulary Part 2 Mobile cranes ISO 4306-1985
IS 13558: Part 2:1995/	Cranes - Controls - Layout and Characteristics - Part ISO 7752 -2- 1986 Mobile Cranes
IS 13834 : Part 2: 1993/	Cranes - Classification: Part 2 Mobile cranes ISO 4301 - 2 :1985
IS 13870: Part 2: 1993/	Cranes and Lifting Appliances - Selection of Wire ISO 4308 :1988 Ropes - Part 2: Mobile Cranes -Coefficient of utilization
IS 14469: 1997/	Mobile Cranes - Determination of Stability ISO 4305 - 1991
IS 14474: Part 1: 1997/	Mobile Cranes - Experimental Determination of Crane
ISO 11662-1 :1995	Performance - Part 1 : Tipping Loads and Radii
IS 3173: 1965	Specification for High pressure connections for fuel injection equipment for diesel engines

### C-4 Conveyors for Bulk Handling

#### Conveyors

IS 4776:Part I: 1977	Specification for Troughed Belt Conveyors- Part I Troughed Belt Conveyors for Surface Installation
IS 8597 - 1977	Flat Belt Conveyors
IS 11592 - 2000	Code of practice for selection and design of Belt Conveyors
IS 7465 - 1974	Portable and Mobile troughed Belt Conveyor
IS 7155:Part 1: 1986	Code of recommended practice for conveyor safety : Part

	1 General Information
IS 7155:Part 2: 1986	Code of recommended practice for conveyor safety : Part
	2 General Safety requirement
IS 7155:Part 3: 1986	Code of recommended practice for conveyor safety : Part
	3 Belt Conveyors and feeders
IS 7155:Part 4: 1990	Code of recommended practice for conveyor safety : Part
	4 Vibrating Conveyor/feeder
IS 7155:Part 5: 1990	Code of recommended practice for conveyor safety : Part
	5 Apron Conveyor/Apron Feeder
IS 7155:Part 6: 1990	Code of recommended practice for conveyor safety : Part
	6 Selection, Training and Supervision of Operators
IS 7155:Part 7: 1990	Code of recommended practice for conveyor safety : Part
	7 Inspection and Maintenance
IS 7155:Part 8: 1994	Code of recommended practice for conveyor safety: Part
	8 Flight Conveyors (scraper conveyors)

#### *Idlers and Pulleys*

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

#### *Conveyor Belts*

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

#### **C-5 Equipments For Bulk Handling**

IS 10463: Part 2 1983	Glossary of Terms for Bulk Handling equipments:
(Reaffirmed 2004)	Stacking Loading and Reclaiming Equipments
IS10463: Part 6 1983	Glossary of Terms for Bulk Handling equipments:
(Reaffirmed 1999)	Cyclic loose bulk handling equipments (non-stationary)
IS 13082: Part 1 1991	Bulk handling equipment – ship unloader – gantry mounted
(Reaffirmed 2001)	grab type – Code of practice for design manufacture and

IS13082:Part 2 1991 (Reaffirmed 2001)	erection – mechanical and structural requirements Bulk handling equipment – ship unloader – gantry mounted grab type – Code of practice for design manufacture and erection – electro mechanical requirements
IS13082:Part 3 1991 (Reaffirmed 2001)	Bulk handling equipment – ship uploader – gantry mounted grab type – Code of practice for design manufacture and erection – information to be supplied by the purchaser and manufacturer
IS13048:Part 1 1991 (Reaffirmed 2004)	Bulk handling equipment – mobile continuous type – rules for design of structures
IS14416: 1996 (Reaffirmed 2001)	Bulk handling equipment –boom type bucket wheel reclaimer– rail mounted – design, manufacture and erection – code of practice
IS14447: 1996 (Reaffirmed 2001)	Bulk handling equipment – single boom slewable stacker – rail mounted – design, manufacture and erection – code of practice

**D Electrical**

IS 325: 1996	Three-phase induction motors
IS 900: 1992	Code of practice for installation and maintenance of induction motors
IS 1231: 1974	Dimensions of Three-phase Foot-mounted Induction Motors
IS 2223: 1983	Dimensions of flange mounted ac induction motors
IS 3682: 1966	Flame-proof ac motors for use in mines
IS 3842: Part 2 : 1966	Application guide for electrical relays for ac systems: - Part 2 Over current relays for generators and motors
IS 4029: 1967	Guide for testing three-phase induction motors
IS 8151: 1976	Single-speed three-phase induction motors for driving lifts
IS 8789: 1996	Values of performance characteristics for three-phase induction motors
IS 9628: 1980	Three-phase induction motors with type of protection 'n'
IS 10242: Part 3 : Sec 1:1983	Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors

IS 12615: 2004	Energy Efficient Induction Motors - Three Phase Squirrel Cage
IS 13529: 1992	Guide on Effects of Unbalanced Voltages on the Performance of Three-Phase Cage Induction Motors
IS 13555: 1993	Guide for Selection and Application of 3-Phase A. C. Induction Motors for Different Types of Driven Equipment
IS 14122: 1994	Built in thermal protection for electric motors rated up to 660 V ac
IS 14377: 1996	Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation
IS 15429: 2004	Storage, Installation and Maintenance of DC Motors - Code of Practice
IS 3043: 1987	Code of practice for earthing
IS 3151: 1982	Earthing transformers
IS 5553(Part 6) 1991	Reactor Parts – Earthing of Transformers
IS 9921: Part 1: 1981	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1 000 V -Part I: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 1982	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction
IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing – Specification

for VIZAG AIRPORT PRIVATE LIMITED

IS 10118 (Part 3): 1983	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 installation
IS 10118 (Part 4): 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

For all other equipment not covered in the above standards, equivalent or higher standards in BS, JIS, FEM, DIN, ISO, IEC, are acceptable.

#### **E Operations & Maintenance Standards**

##### **Repairs, Maintenance and Replacement**

The Concessionaire at its own cost will 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 Manufacturer's manual which need to be supplied to Concessioneing Authority by the Concessionaire.

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

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

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



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

**E.1 Maintenance Standards**

ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (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 oftanks and container, red oxide (colour unspecified)
IS 145 : 1950	Ready mixed paint, slushing, petrol resisting air-drying for interior painting of tanks containers, red oxide (colour unspecified)and
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

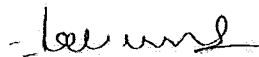
APPENDIX 5  
**PROJECT SCHEDULE**

Milestone date	Activity/level of completion of project
180 Days from Date of Award of Concession	10% of Construction Works should have been completed
365 Days from Date of Award of Concession	30% of Construction Works should have been completed
730 Days from Date of Award of Concession	100% of Construction Works should have been completed

The detailed CPM chart shall be furnished by the Concessionaire

For VIZAG AIRPORT PRIVATE LIMITED

  
Authorised Signatory



सचिव  
SECRETARY

वा. &  
वि.पो.इ. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

## APPENDIX 6

### DESIGN AND DRAWINGS

#### Civil:

The Concessionaire shall submit the scheme & Design of strengthening and deepening of EQ-7 berth to cater to 12.5 m draft vessels on their own as per the of RFP document.

1. General Layout of the proposed upgradation of the berth, Conveyor system and stackyard developments.
2. Layout of the facilities planned.
3. Cross section of the berth.
4. Typical soil parameters considered in the design.
5. Layout of material handling facility proposed by the concessionaire.
6. Sectional layout of material handling facility.
7. Detailed designs and drawings of the proposed berth. Sub structures, Super Structures and details of piles, main beams, cross beams, fascia, deck slab etc.
8. Detailed designs and drawings for proper conveyor system.
9. Detailed designs and drawings for the development of proposed stock yard.
10. Detailed designs and drawings for the proposed crane track, ship unloader, stacker.
11. Detailed designs and drawings for fenders, bollards and other marine fixtures.
12. Any other Project relevant drawings intended by the Concessioneing Authority

#### DESIGN AND DRAWINGS

The Concessioneing Authority expects that the concessionaire submit the following drawings and designs

#### A. Drawings

1. Survey layout with the facilities planned
2. Layout of works
3. General Layout of berth, Return end and storage facilities with pipe line routing etc.,

4. Typical details such as cross section of the berth , Tankages, Buildings etc.,
  5. Details of Berthing fixtures such as fenders, bollards, ladders etc.,
  6. Dredging Plan
  7. Area illumination, Fire fighting, water supply, treatment plant etc.,
  8. working drawings including all reinforcement details
  9. Drawings of site specific soil profile and for soil improvement
  10. Drawings for temporary works
  11. Any other drawing required for proper execution.
- B. Designs
1. Designs of temporary works
  2. Detailed design of berth and Return end
  3. Detailed design for Tankages including foundation
  4. Detailed design for pipe lines, Marine loading and unloading arms and supporting arrangements
  5. Details design of operational buildings
  6. Design of berth fixtures such as fenders, bollards, ladders etc.,
  7. Any other designs required for proper execution.

**Mechanical:**

**1. CALCULATIONS AND MANUALS:**

The bearing life and all other relevant calculations relating to the slew assemblies shall be supplied before testing and commissioning of the machines. Other data such as bearing manufacture number, serial number etc. must be submitted to the Independent Engineer for future reference. Bolt connection calculations for operating and maximum no operating conditions to be submitted. The manufacturer's quality control activities shall include the testing of all roller and/or ball races of the bearing for cracks or imperfections using magnetic particle testing in accordance with AS 1171 or equivalent Indian Standard. The test certificates shall be submitted along with the supply of bearing. In addition the following information are required to be submitted.

- Installation drawings.
- Drawing(s) of bearing seating rings if applicable.

- Illustrated description of installation procedure.
- Number, position and size of jacks required.
- Flatness tolerances of bearing seat prior to installation of bearing.
- Under casting (grouting) procedure and materials if applicable.
- Circularity and flatness tolerance of installed (bolted down) bearing.
- Permissible elastic deformations (in operation).
- Permissible bearing wear including methods and intervals of measurement.
- Grade and tightening methods or torques of bearing holding bolts including tolerances and recommended re-torquing intervals.
- Position of bearing "soft spots" and their required placement relative to stationary and rotating parts of the machine.
- Proposed backlash and alignment tolerances for gearing if applicable.
- Grease types and recommended greasing intervals for the labyrinth seals, bearing and gears as applicable.

2. DRAWINGS & OTHER INFORMATION:

- 2.1. All drawings shall be prepared using the latest version of AutoCAD.
- 2.2. AS BUILT DRAWINGS {in CD ROM (in AutoCAD format) and Reproducible Tracing Format (RTF)} of the components, subassemblies, structures, electricals etc. including, but not limited to the following, to be submitted prior to handing over:
  - i. General Arrangement Drawings, with Principal Details and Leading Dimensions, etc.,
  - ii. Drawings of bought out items.
  - iii. Single line electrical schematic drawings, including Cable Routes, Lighting Equipment details, Electrical Panel Diagram and Earthing Scheme.
  - iv. Outline drawings with principal details and leading dimensions of major electrical equipment.
  - v. Diagram showing wheel loads.
  - vi. Schematic electronic and programmable control details.

- vii. Schematic arrangement of Luffing Mechanism.
  - viii. Schematic Hydraulic Circuits, wherever applicable.
  - ix. General Arrangements of Machinery House, Electrical Control Room, etc.
  - x. General Arrangement of the Operator's Cabin, clearly indicating the location of various controls and indicators.
  - xi. Detailed Drawings of Luffing Arrangements.
  - xii. Detailed Structural drawings.
  - xiii. Detailed Drawings of Bogie arrangement.
  - xiv. Detailed drawings of Machinery Room and Operator's Cabin including Power Equipment arrangement.
- 2.3. Technical details of all bought out items, including, but not limited to the followings, are to be submitted along with Reclaimer, before handing over :
- a) Parts Catalogues.
  - b) Name and Address of the Manufacturer(s).
  - c) Name and Address of the Indian Agent(s) of the Manufacturer(s), wherever applicable.
  - d) Bearing Number(s) & Oil Seal Size(s) for all Gear Reducers and Bearing Number(s) for all Motors.
- 2.4. "AS CONSTRUCTED" Performance Specification, including the followings, are to be submitted along with each, before handing over:
- a) Wheel loads.
  - b) Operating Speeds.
  - c) Commissioning Test Results.
  - d) Statutory Test Certificates.
  - e) Others as per Scope of Work.
- 2.5. Major Technical Details and Make / Brand of the following items, are to be submitted along with each Equipment, before handing over:
- a) Motors.
  - b) Switch Gears.
  - c) Power Electronics, Control System and PLCs.
  - d) Hydraulic Power Packs.

**2.5. OPERATION & MAINTENANCE MANUAL:**

2.5.1. The contractor shall have to provide also Operating and Maintenance (O&M) Manual, which will cover the operation, lubrication, maintenance and inspection of the Equipments, including routine and major maintenance of mechanical and electrical components. Routine and major inspection of the structure shall be covered by the structural maintenance manual. Detailed electrical drawing shall have to be included with each O&M Manual. The O&M Manual shall be hard bound and indexed for easy reading. The contractor shall furnish 6 sets O&M Manual along with supply of each Equipment.

2.5.2. Following manuals to be provided with Equipments before handing over:

- a) All Technical and Operating Instruction Manuals for the Equipments and components.
- b) Manuals for Setting up and Test Procedures.
- c) Manuals for Operational Duties and restrictions.
- d) Manuals for Maintenance for enabling the technicians to undertake all necessary repairs, disassembly, re-assembly, fault finding procedures and any other maintenance or repair procedures, required to be undertaken.

**2.6. DESIGN APPRAISAL AND APPROVAL OF QUALITY ASSUARANCE PLAN:**

The design of the equipments are to be appraised to the Independent Engineer, to be appointed. The successful BOT Operator will submit the Quality Assurance Plan (based on Technical Specification & Scope of Work) to the "Independent Engineer" for approval, duly recommended by the 3rd Party Inspection Agency. After approval of the Quality Assurance Plan (QAP) by the "Engineer", inspection will be carried out by the 3rd Party Inspection Agency, based on the approved QAP, Technical

Parameters & Scope of Work.

Note: 1) All dimensional drawings 6 sets should be supplied at the time of handing over the machine

S.No.	Description	Quantity
1.	Dimensional drawings	6 sets
2.	Spare parts catalogue	6 sets
3.	Operation manual	6 sets
4.	Maintenance manual	6 sets
5.	Electrical circuit diagram	6 sets



Parameters & Scope of Work.

Note: 1) All dimensional drawings 6 sets should be supplied at the time of handing over the machine

S.No.	Description	Quantity
1.	Dimensional drawings	6 sets
2.	Spare parts catalogue	6 sets
3.	Operation manual	6 sets
4.	Maintenance manual	6 sets
5.	Electrical circuit diagram	6 sets





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

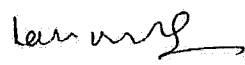
- For VIZAG AGRIPORT PRIVATE LIMITED**

make a recommendation to the Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

- (xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioneing Authority.
- (xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority and the Concessionaire of the same.
- (xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

For VIZAG AGRIPORT PRIVATE LIMITED

  
Authorised Signatory

  
सचिव  
SECRETARY  
वा. &  
वि.पो.ट. मंडल का प्रतिनिधि  
ATTORNEY OF THE VPT BOARD  
विशाखपट्टणम/VISAKHAPATNAM

**Annexure**

**Tests**

**CIVIL**

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the project requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their 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 Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
- 5) The Independent Engineer at 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 and determine conformity of the Project Requirements with the provisions of the Agreement.
- (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged through the Concessionaire.

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

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual 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) Test shall also satisfy the appropriate Authority and certification

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

### MECHANICAL

#### **Load tests:**

1. Prior to being placed in service, the conveyor system & equipments shall be tested under over load conditions as below:

- 1.1. Dynamic test: The dynamic test shall be carried out with a load of 120 percent of the safe working load. All motions shall be carefully operated in turn without checking speeds or temperature rises in the motors.
- 1.2. Static test: The static test shall be carried out with a load equal to 140 per



cent of the safe working load. This test shall be carried out under still conditions and consists of hoisting the safe working load to small distance above the ground and then adding the require surplus without shock.

- 1.3 Acceptable tolerances for rail mounted equipments: Acceptable tolerance on trolleys & the trolley rail centre distances shall not differ from the nominal dimension by more than  $\pm 3$  mm.
- 1.4 The difference in height of two opposite points of the trolleys, track perpendicular to the travel direction of the trolley shall not exceed 0.15 percent of the trolley rail-centre distance, with a maximum of 10 mm.
- 1.5 The axis of the wheel axle bores shall be within an angular deviation in the horizontal place of  $\pm 0.04$  percent from its theoretical position.
- 1.6 The axle bores of the wheels opposite to each other and if wheels are mounted in bogies, the axis of the bogies pins of the unwrapped trolley and unloader bridge shall have an alignment divergence in the vertical plane, less than 0.15 percent, maximum 2 mm of the trolley wheel centre distance.
- 1.7 The centres of the wheels rolling on a common rail shall not diverge more than  $\pm 1$  mm from the rail centre.
- 1.8 For bushed wheels the above tolerances apply with the wheels in a central position between the wearing plates at either side of the wheel boss.
- 1.9 The diameter tolerance of the wheel shall correspond to 'h9' as per IS 919 (part I) : 1993.
- 1.10 The above tolerance apply to non-driven wheels also as the wheels shall have to be interchangeable.
- 1.11 It is assumed that with the trolley positioned in the centre of the span the deflection of both rail tracks shall be approximately equal.

## 2. Inspection & Testing Before Shipment / Transportation to the Yard:

- 2.1. Following Testing / Inspection / Checking should be carried out in presence of the 3rd Party Inspection Agency, before Shipment / Transportation to Yard:

- a) Stage-wise inspection of material (including test for bought out items), welding, casting & forging, assemblies, subassemblies, painting, etc.
- b) Verification of all critical dimensions.
- c) Checking and testing of all motions, without load (physically in coupled / decoupled condition or deriving from the test results).

2.2. Copies of all test & checking reports and certificate regarding successful completion of design shall have to be submitted to the Engineer before shipment. Based on the satisfactory test report and design appraisal certificate, the despatch clearance will be given by the Engineer, before shipment.

2.3. FINAL TESTING & COMMISSIONING:

After completion of the erection and installation of the Reclaimer, all equipment and machinery shall be tested and the same shall be run without load and all necessary adjustments shall then be completed.

Following Testing / Inspection / Checking should be carried out in presence of the Independent Engineer at the site.

a) Tests for Long travel Operation, Boom Luffing Range, Boom Slewing Range as per Principal Technical Parameters, including all specified movements, etc.

b) Operation of all limit switches, safety trips, cut outs, emergency stops and control device.

c) Endurance Test:

Endurance Test for minimum 12 hours operation (in 3 phases of continuous work for minimum 4 hrs.), shall have to be shown by the Contractor at site ..

d) Demonstration of guaranteed capacity.

The contractor shall have to demonstrate regarding achieving the guaranteed capacity of 4500 MT per hour, before handing over, as per the procedure detailed below. The contractor shall demonstrate that the Conveyor system & equipments shall be able to meet the guaranteed

capacity requirement specified herein without any undue strain and vibration. It shall be able to achieve the speed of various motions as assumed for guaranteed capacity calculation by the contractor. The test for guaranteed capacity shall be carried out for continuous operation for 1 (one) hour. Such test, as described above, shall be repeated three times and average quantity of Coal reclaimed (in MT) thereof will be used to arrive at the guaranteed capacity of 4500 MT per hour.

2.4. INSPECTION OF WELDING JOINTS, CASTING & FORGING:

- a) All welding work, casting and forging shall be subjected to radiographic or ultrasonic testing as per design requirement and Test Certificate shall be furnished. The Engineer or his representative or the third party inspection agency reserves the right to examine the radiographic films of welding joints independently. In case of difference of opinion on a radiographic film about the soundness of any welding joint between the contractor and the Engineer, the opinion of any Govt. Testing Laboratory / Institution or Govt. Recognized Testing Laboratory / Institution in India shall govern.
- b) Suitable means shall be adopted in identifying each radio graphically tested joint with reference to the radiographic films even after commissioning and the same information shall be furnished to the Employer at the time of delivery of the equipment for documentation.
- c) Minimum 300 millimeters for each 1000 millimeter length of welding joints shall be radio graphically tested whenever design / manufacturing drawings call for testing.
- d) The Engineer reserves the right to test radio graphically about 3% length of any other welding joints, which are not covered in above para(ii).
- e) If any of the tests shows defective welding, further test shall be carried out. All such tests shall be at the contractor's cost.
- f) All radiographic quality welding joints shall be principally grade 'black'. However, grades 'blue' and 'green' will also be acceptable,

subject to the approval of the Engineer, on tension and shear load-carrying members respectively provided they are of short lengths.

3. STANDARDS, ACTS, RULES:

- 3.1. The system of units known as the System International (S.I.) shall be adopted.
- 3.2. The work shall be carried out in accordance with the requirements of the latest revision of the applicable Indian Codes. Where Indian Codes are not available, suitable International Codes will be applicable.
- 3.3. The minimum Standard for Material and Components, to be used.. However, for the Material and Components, which are not specified, Standard should be as per IS / BS / EN / DIN / JIS / ISO / IEC.
- 3.4. Relevant aspects of following Rules / Code of Practices should also be followed and complied with:
  - I. Indian Factories Act.
  - II. Indian Electricity Rules.
  - III. Indian Electricity Act.
  - IV. Other local regulations.

4. TEST FOR ELECTRICAL SYSTEM:

Before any electrical system is put to use, the contractor shall carry out all the tests as per Indian Electricity Rules and IEC / IEE or equivalent international standards for electrical installations

- 4.1 Motors control wiring and other electrical equipment shall be designed and tested in accordance with the latest version of applicable Indian Standard specifications. Where no Indian standard is available equipment shall conform to relevant British standard /VDE/IEC specifications.  
Air conditioning: In the interest of long life and reliable operation, electronic components and other components sensitive to temperature, humidity and dust, shall be located in air-conditioned space(s).
- 4.2. Communication facilities: Inter-communication facility within the equipments is recommended.
- 4.3 Automation: Where considered essential automation may be provided to

reduce physically and psychological stress of operator. Provision shall be kept for over riding automation.

**Tests on electrical equipment:**

- a) The transformer and motor shall be given tests by the manufacturer according to their respective standards; manufacturer shall provide certified test reports. The switchgear shall be tested after assembly at the factory of wiring and functioning of the equipment.
- b) After installation, all circuits and equipment shall be tested by the Contractor for grounds, short circuits and proper operation.
- c) All cables, motors, instrument transformer and all dry type transformers shall be meggered by the Contractor and a log kept of such tests. This log shall be certified by the Engineer before completion of the job both as test and date of test.
- d) The 415 volts circuit breakers and starters shall be given a die-electric test of 2000 volts for the minute between Live parts and ground and between opposite polarities. The wiring and control circuits shall be given a die-electric test of 1500 volts for one minute between live parts and ground.
- e) All major equipment such as transformers switchgear, motor control centers etc., and motors shall be energized initially in the presence of the Independent Engineer.

For VIZAG AIRPORT PRIVATE LIMITED

Authorized Signatory

APPENDIX 8

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

Concessionaire is liable to obtain Applicable Permits as and when required before commencement of the construction works.

- A. The following is 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 Clearance	Consent for Establishment (CFE) under the provisions of water (P&C) Act 1974 and Air (P&C) Act 1981 from Andhra Pradesh State Pollution Control Board.
Plot Plan approval	Dock safety Inspector / OISD guidelines.
Electrical Installations	Electrical Inspectorate, Govt. of Andhra Pradesh
Fire Safety Concerns	Chief Fire Officer, Hyderabad OISD guidelines or Applicable international codes / practices

- B. The following is a list of the Applicable Permits available with the Concessing Authority:

Activity	Authority
Port Limit Notification	Ministry of Shipping
Custom Notification for Part of area proposed to be leased	Commissioner of Customs

APPENDIX 9  
**PERFORMANCE GUARANTEE**

**(PROFORMA OF BANK GUARANTEE)<sup>1</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 VISAKHAPATNAM PORT TRUST, a body corporate constituted under the  
provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at  
Visakhapatnam-530035, Andhra Pradesh (hereinafter referred to as “the Board” or “the  
Concessioning Authority”) which expression shall, unless repugnant to the context or  
meaning thereof include its administrators, successors or assigns.

**WHEREAS**

- a) The Board, vide its Request for Proposal dated December 31, 2010 (“the RFP”) invited duly short listed bidders to implement a project envisaging Planning, Designing, Engineering, Installation, Finance, Operation & Maintenance of Mechanised Fertilizer Handling Facilities at EQ-7 berth in Inner Harbour of Visakhapatnam Port on DBFOT basis by Private Sector Participation (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 ABG-LDA Bulk Handling Private Limited, and IL&FS Maritime Infrastructure Company Limited (“the Consortium”) and issued the Letter of Intent No IM&EE/MOF/MECH-I/EQ-7/1409 dated March 8,

<sup>1</sup> To be issued by a Scheduled Bank in India

2012 ("LOI") to the Consortium requiring, inter alia, the execution of the Concession Agreement, ("the Concession Agreement") the draft whereof was provided in the RFP;

- c) Pursuant to the LOI the Consortium has promoted and incorporated a special purpose company Vizag Agriport Private Limited ("the Concessionaire"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of **Rs. 108.80** millions (Rupees one hundred and eight decimal eight millions only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

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

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. Vizag Agriport Private Limited ("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. 108.80** millions (Rupees one hundred and eight

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory

सचिव  
SECRETARY  
वि.पो. र. मंडल की प्रतिनिधि  
ATTORNEY OF THE VIZAG  
विभाग/विभाग/विभाग



decimal eight millions only) within five (5) calendar Days of receipt of a written demand therefore from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioneing Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/ released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. 108.80 millions (Rupees one hundred and eight decimal eight millions 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.
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 Visakhapatnam, Andhra Pradesh for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioneing Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

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

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

## APPENDIX 10 CERTIFICATES

### COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for planning, engineering, designing, finance, construction, development, operation & maintenance of Installation of Mechanised Fertiliser Handling Facilities at EQ-7 berth in Inner Harbour of Visakhapatnam Port on DBFOT basis by Private Sector participation, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

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

(Signature)

(Name)

(Designation)

(Address)

### PROVISIONAL CERTIFICATE

1. I, [[•] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [•], for planning, engineering, designing, finance, construction, development, operation & maintenance of Installation of Mechanised Fertiliser Handling Facilities at EQ-7 berth in Inner Harbour of Visakhapatnam Port on DBFOT basis by Private Sector participation 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 Concessioning 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 CON CESSIONAIRE by: (Signature)	ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by: (Signature)
--	---

(Name and Designation)	(Name and Designation)
(Address)	(Address)

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory

Handwritten signature  
SECRETARY  
OF &  
ATTORNEY OF THE VPT BOARD  
VIZAG/VIKAPATNAM

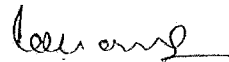
APPENDIX 11  
**PERSONNEL AND LABOUR REQUIREMENTS**

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

For VIZAG AGRIPORT PRIVATE LIMITED



Authorised Signatory



CHIEF EXECUTIVE OFFICER  
&  
MANAGING DIRECTOR  
VIZAG AGRIPORT BOARD  
VIZAG AGRIPORT PRIVATE LIMITED

APPENDIX 12

**TARIFF**

**UPFRONT TARIFF SCHEDULE FOR MECHANIZED HANDLING OF  
FERTILIZERS**

*As per Case No. TAMP/26/2009-VPT dated November 27, 2009; Variation G. No. 138 dated April 30, 2010 and any modifications thereto*

**1.1. DEFINITIONS**

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

- (i) "Coastal vessel" means any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority.
- (ii) "Foreign-going vessel" shall mean any vessel other than Coastal vessel.
- (iii) "Day" shall mean the period starting from 6.00 A.M. of a day and ending at 6.00 A.M. on the next day

**1.2. GENERAL TERMS & CONDITIONS**

- i. The status of the vessel, as borne out by its certification by the customs or Director General of Shipping, is the relevant factor to decide whether vessel is "coastal" or "foreign-going" for the purpose of levy of vessel related charges; and the nature of cargo or its origin will not be of any relevance for this purpose.
- ii.
  - a. The cargo related charges for all coastal cargo other than crude including POL, Iron ore and Iron pellets and thermal coal should not exceed 60% of the normal cargo related charges.
  - b. In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer and transfer from/to quay to/from storage yard including wharfage.
  - c. Cargo from a foreign port which reaches an Indian Port "A" for subsequent transshipment to Indian Port "B" will be levied the concession charges relevant for its coastal voyage. In other words, cargo from/to



Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

- d. The charges for coastal cargo / containers / vessels shall be denominated and collected in Indian rupee.
- iii. Interest on delayed payments / refunds.
  - a. The user shall pay penal interest on delayed payments for any charge under this Scale of Rates. Likewise, the terminal operator shall pay penal interest on delayed refunds.
  - b. The rate of penal interest will be 2% above the prime lending rate of the State Bank of India.
  - c. The delay on refunds will be counted only 20 days from the day of completion of services or on production of all the documents required from the users, whichever is later.
  - d. The delay in payments by the users will be counted beyond 10 days after the date of raising the bills by the terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in the scale of rates.
- iv. In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto and inclusive 0.5 shall be taken as 0.5 unit and fractions of above 0.5 shall be treated as one unit, except where otherwise specified.
- v. All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.
- vi.
  - a. The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The terminal operator may, if it so desires, charge lower rates and / or allow higher rebates and discounts.
  - b. The terminal operator may also, if it so desires rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.
  - c. The terminal operator should, however, notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates fixed shall not exceed the rates notified by the TAMP

- vii. Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

## 2 CARGO HANDLING CHARGES:

(A) Composite Handling Charge (excluding bagging and stitching service)

Sl. No.	Commodity	Unit	Rate in Rupees	
			Foreign	Coastal
a	Finished fertilisers including muriate of potash	Per Metric Tonne	126.55	75.93

**Note:**

The handling charges prescribed above is a composite charge for unloading of the cargo from the vessel including stevedoring and transfer of the same up to the point of storage, storage at the stackyard / silos up to a free period of 5 days, and loading on to trucks / railway wagons. This composite charge includes wharfage and supply of labour, wherever necessary and all other miscellaneous charges not specifically prescribed in the Scale of Rates. This does not cover the services of bagging and stitching related services for which separate tariff is prescribed in the Schedule (B).

(B) Charge for Bagging and Stitching Service

Sl. No.	Commodity	Unit	Rate in Rupees
			Foreign and Coastal
a	Finished Fertilisers including muriate of potash	Per Metric Tonne	110.53

**Note:**

The charges prescribed above are applicable only for cargo handed at the bagging plant and cover bagging and stitching service, labour cost for carrying of bags from conveyor/ chute to stacking area, Destacking from platform, carrying to wagons and loading the assigned number of bags into wagons and sealing of wagons, cleaning of wagons, lining the wagon floor with dunnage plus other allied services.

## 3 STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period allowed shall be as below.

- (A). Free period:  
Import cargo                      5 days free.

(B) Storage charges after free period (per ton / per day)

Description	Rate in Rs. Per tonne per day
First five days after expiry of free period	1.30
6 <sup>th</sup> day to 10 <sup>th</sup> day after expiry of free period	3.90
11 <sup>th</sup> day onwards	6.50

Notes:

- (i). For the purpose of calculation of free period Customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.
- (iii). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.

4. MISCELLANEOUS CHARGES:

Rs.1.30 per tonne is a composite charge for all miscellaneous services such as fumigation, cargo security etc.

5. GENERAL NOTE TO SCHEDULE (2) to (3) ABOVE:

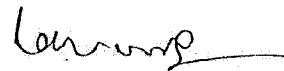
The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2009 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.

\*\*\*\*\*

For VIZAG AIRPORT PRIVATE LIMITED



Authorised Signatory



VIZAG AIRPORT PRIVATE LIMITED

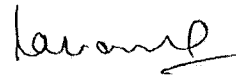
APPENDIX 13

**RATES APPLICABLE IN RESPECT OF LAND, UTILITIES  
AND SERVICES**

- |                                |                   |
|--------------------------------|-------------------|
| 1. For Land:                   | Schedule of Rates |
| 2. For Utilities and services: | Scale of Rates    |

For VIZAS AGRIPORT PRIVATE LIMITED

Authorised Signatory



Signature of the Authorised Signatory  
Name: [illegible]  
Designation: [illegible]  
Address: [illegible]

APPENDIX 14  
**MINIMUM GUARANTEED CARGO**

The minimum guaranteed cargo will be as follows for the project.

Sl. No	Period *	Minimum guaranteed cargo
1.	0 -5 years	25% of 5.21 MMT=1.30 MMT
2.	6 -15 years	40% of 5.21 MMT =2.08 MMT
3.	16 <sup>th</sup> year onwards	60% of 5.21 MMT =3.13 MMT

NOTE: \* The period is reckoned from the "date of commercial operations".  
The Project does not envisage handling of Ammonium Nitrate



2. Performance Evaluation and calculation of liquidated damages:

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and / or the records of the Concessionaire and/or by an enquiry by the Concessioneing Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent) in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above. The actual average performance will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Gross Berth Output by x%, Transit Storage Dwell Time by y% and Turn round time for receipt/delivery operations by z% and the weightages assigned to each of these shortfalls shortfalls are 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be  $(0.7x + 0.2 y + 0.1 z)\%$ .

APPENDIX 16

**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** is entered into on this the [•] day of [•] 20[•].

**AMONGST**

1. Vizag Agriport Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [•] (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [• (name and particulars of Lenders' Representative)] and having its registered office at [•] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [• (name and particulars of the Escrow Bank)] and having its registered office at [•] (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES for VISAKHAPATNAM PORT TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Visakhapatnam, Andhra Pradesh, hereinafter referred to as "the Concessioneing Authority" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

**WHEREAS:**

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory

SECRETARY Page 198  
Sd/-  
ATTORNEY OF THE MPT BOARD  
VIZAG/2011/VISAP/18MAY/2012



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

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

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

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

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

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

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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

"Quarter" means, any three month period from 1<sup>st</sup> April to 30<sup>th</sup> June, 1<sup>st</sup> July to 30<sup>th</sup> September, 1<sup>st</sup> October to 31<sup>st</sup> December or 1<sup>st</sup> January to 31<sup>st</sup> March.

## 1.2 Interpretation

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

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

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

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

## 2. ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

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

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

### 2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the Concessioneing Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessioneing Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

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

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

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

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

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

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

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

## 2.5 Rights of the parties

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

## 2.6 Substitution of the Concessionaire

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

## 3 DEPOSITS INTO ESCROW ACCOUNT

### 3.1 Deposits by the Concessionaire

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

- (a) all monies received in relation to the Project from any source, including the Lenders;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
- (e) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the Concessioneing Authority or such other authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

#### 4. WITHDRAWALS FROM ESCROW ACCOUNT

##### 4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments in a month :

- (a) all taxes due and payable by the Concessionaire;
- (b) towards License Fee;
- (c) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (d) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (e) towards its debt service obligations under the Financing Documents;
- (f) towards Royalty and other sums payable to the Concessioneing Authority and liquidated damages, if any;
- (g) towards any reserve requirements in accordance with the Financing Documents;

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

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

**4.2 Withdrawals upon end of Concession Period**

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

- (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 and the Escrow Agent has received a confirmation of final settlement by the Lenders and/or Concessioneing Authority.

**4.3 Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow

Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

**4.4 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow Bank receives a notice in writing from the Concession Authority that the rights of the Concessionaire are suspended in accordance with the Concession Agreement or a Termination Notice is issued, the Escrow Bank shall until such notice is withdrawn, act only on the instructions of the Concessioning Authority.

**5. OBLIGATIONS OF THE ESCROW BANK**

**5.1 Segregation of funds**

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

**5.2 Notification of balances**

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

**5.3 Communications and notices**

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

**For VIZAG AIRPORT PRIVATE LIMITED**

Authorised Signatory

ATTORNEY OF



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

#### 5.4 No set off

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

#### 5.5 Regulatory approvals

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

## 6 ESCROW DEFAULT

### 6.1 Escrow Default

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

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

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

## 7. TERMINATION OF ESCROW AGREEMENT

### 7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to the Concessioneing Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

### 7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) Days prior notice to the Escrow Bank, the Concessioneing Authority and the Lenders' Representative,

terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

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

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Documents including the payments specified in Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8. SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary escrow agreement**

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

## 9. INDEMNITY

### 9.1 General indemnity

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

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

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

### 9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of

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

## 10. MISCELLANEOUS PROVISIONS

### 10.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [•] shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 10.2 Waiver of sovereign immunity

The Concessioneing Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessioneing Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **10.3 Priority of agreements**

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

### **10.4 Alteration of terms**

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

### **10.5 Waiver**

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

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

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation

thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

**10.6 No third party beneficiaries**

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

**10.7 Survival**

**10.7.1 Termination of this Agreement:**

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

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

**10.8 Severability**

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

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

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:

Tel No: 0891- 2876001  
Fax No.: 0891- 2565023

Fax No. \_\_\_\_\_  
Email: \_\_\_\_\_

For VIZAG ~~GRIPORT~~ PRIVATE LIMITED

**Authorized Signatory**

Page 214  
 वि.पो.द्र. बहादुर पा. मल्लिकार्जुन  
 ATTORNEY OF THE APP. BOARD  
 विशाखपट्टणम/VISAKHAPATNAM





**10.13 Original Document**

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

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

**SIGNED, SEALED AND DELIVERED**

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

**SIGNED, SEALED AND DELIVERED**

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

**SIGNED, SEALED AND DELIVERED**

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

**For VIZAG AIRPORT PRIVATE LIMITED**

Authorized Signatory:

Page 216  
ATTORNEY OF THE VET BOARD  
BIRNEDUPUR, CO. CALAGATNAM

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioneing Authority by:

(Signature)

(Name)

(Designation)

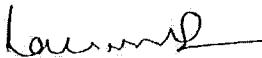
(Address)

(Fax No.)

In the presence of:

For VIZAS AGRIPORT PRIVATE LIMITED

Authorised Signatory

  
सचिव  
SECRETARY  
र.  
वि.पो.ट्र. मंडल विकास बोर्ड  
ATTORNEY OF THE BOARD  
विशाखपट्टणम/ VISAKHAPATNAM

**APPENDIX 17**  
**PRE-CONTRACT INTEGRITY PACT**

**General**

1. The Board of Trustees for Visakhapatnam Port Trust a body corporate constituted under MPT Act, 1963 (hereinafter referred to as the Concessioneing Authority and the first party) represented by its Secretary and Attorney of the Board which expression shall unless repugnant to the context shall mean and include all its succession, assignees etc., on one part,  
And  
M/s Vizag Agriport Pvt. Ltd. represented by, Mr. Gurpreet Malhi (hereinafter referred to as the Concessionaire) which expression shall unless repugnant to the context shall mean and include all its succession, assignees etc., on the other part.
2. Whereas the Concessionaire is a Special Purpose Vehicle constituted in accordance with the relevant law in the matter and the Concessioneing Authority is a Major Port Trust under Ministry of Shipping, the Government of India and whereas the Concessionaire (2nd party) was shortlisted and identified in the bid process to provide/ offer certain services detailed in the bid documents to the Concessioneing Authority (1st party).

**Objectives:**

3. Now, therefore, the Concessioneing Authority and the Concessionaire agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-
  - a. Enabling the Concessioneing Authority to obtain the desired services in conformity with the defined specifications by avoiding the high cost and the

For VIZAG AGRIPORT PRIVATE LIMITED

Authorised Signatory

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AT. &  
ATTORNEY OF THE VPT BOARD  
VISAKHAPATNAM

distortionary impact of corruption on Port services , and

- b. Enabling Concessionaire to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Concessioneing Authority will commit to prevent corruption, in any form, by their officials by following transparent procedures.

Commitments of the Concessioneing Authority:

4. The Concessioneing Authority Commits itself to the following:-
  - a. The Concessioneing Authority undertakes that no official of the Concessioneing Authority, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Concessionaire, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the Contract.
  - b. The Concessioneing Authority will, during the pre-contract stage, treat all Concessionaires alike, and will provide to all Concessionaires the same information and will not provide any such information to any particular Concessionaire which could afford an advantage to that particular Concessionaire in comparison to other Concessionaires.
  - c. All the officials of the Concessioneing Authority will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.



5. In case of any such preceding misconduct on the part of such official(s) is reported by the Concessionaire to the Concessioneing Authority with full and verifiable facts and the same is *prima facie* found to be correct by the Concessioneing Authority, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Concessioneing Authority and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Concessioneing Authority the proceedings under the contract would not be stalled.

Commitments of Concessionaire:

6. The Concessionaire commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-
- a. The Concessionaire will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Concessioneing Authority, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.
  - b. The Concessionaire further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Concessioneing Authority or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.

7. Previous Transgression:

- For VIZAG AGRIPORT PRIVATE LIMITED

or with any Public Sector Enterprise in India or any Government Department in India, that could justify Concessionaire's exclusion from the tender process.

- b. If the Concessionaire makes incorrect statement on this subject, Concessionaire can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

8. Earnest Money / Security Deposit:

Every Concessionaire, while submitting commercial bid, shall deposit an amount<sup>2</sup> as specified in the RFP as Earnest Money / Security Deposit, with the Concessioneing Authority through any of the following instruments:-

- (i) The Concessionaire shall furnish as part of its Bid, a certified true copy (signed by a Director) of the Bid Security herein above in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore, in favour of the Authority in the format at Appendix – II (the "Bank Guarantee") and having a validity period of not less than 180 days from the Bid Due Date, as may be extended by the Bidder from time to time. The Bank Guarantee that is required to be submitted by the Bidder shall be sent in original to the Authority directly by the issuing Bank vide Registered post. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- (ii) Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Visakhapatnam (the "Demand Draft"). The Authority shall not be



liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

(iii) (Any other mode or through any other instrument, as stated in RFP.

\* The Bidder shall deposit a Bid Security equivalent to [about 1% (one per cent)] of the Estimated Project Cost, i.e Rs.11.45 million (Rupees Eleven decimal four five million only), in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee, acceptable to the Authority

- a. In the case of successful Concessionaire a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the Concessioneing Authority to forfeit the same without assigning any reason for imposing sanction for violation of this pact.
- b. The provisions regarding Sanctions for Violation in Integrity Pact include forfeiture of Performance Bond in case of a decision by the Concessioneing Authority to forfeit the same without assigning any reason for imposing sanction for violation of Integrity Pact.
- c. No interest shall be payable by the Concessioneing Authority to the Concessionaire(s) on Earnest Money / Security Deposit for the period of its currency.

9. Company Code of Conduct

- a. Concessionaires are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

10. Sanctions for Violation

a. Any breach of the aforesaid provisions by the Concessionaire or any one employed by him or acting on his behalf (whether with or without the knowledge of the Concessionaire) or the commission of any offence by the Concessionaire or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Concessioneing Authority to take all or any one of the following actions, wherever required:-

i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Concessionaire. However, the proceedings with the other Concessionaire(s) would continue.

ii) The Earnest Money / Security Deposit / Performance Bond shall stand forfeited either fully or partially, as decided by the Concessioneing Authority and the Concessioneing Authority shall not be required to assign any reason therefore.

iii) To immediately cancel the contract, if already signed, without giving any compensation to the Concessionaire.

iv) To recover all sums already paid by the Concessioneing Authority, and in case of an Indian Concessionaire with interest thereon at 2% higher than the prevailing Prime Lending Rate, while in case of a Concessionaire from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Concessioneing Authority from the Concessionaire in connection with any other contract, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

v) To encash the advance bank guarantee and performance bond/warranty

bond, if furnished by the Concessionaire, in order to recover the payments, already made by the Concessioneing Authority, along with interest.

- vi) To cancel all or any other Contracts with the Concessionaire.
- vii) To debar the Concessionaire from entering into any bid from the Government of India for a minimum period of five years, which may be further extended at the discretion of the Concessioneing Authority.
- viii) To recover all sums paid in violation of this Pact by Concessionaire(s) to any middleman or agent or broker with a view to securing the contract.
- ix) If the Concessionaire or any employee of the Concessionaire or any person acting on behalf of the Concessionaire, either directly or indirectly, is closely related to any of the officers of the Concessioneing Authority, or alternatively, if any close relative of an officer of the Concessioneing Authority has financial interest/stake in the Concessionaire's firm, the same shall be disclosed by the Concessionaire at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Concessioneing Authority to rescind the contract without payment of any compensation to the Concessionaire.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly

dependant upon Government servant.

x) The Concessionaire shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Concessioneing Authority, and if he does so, the Concessioneing Authority shall be entitled forthwith to rescind the contract and all other contracts with the Concessionaire. The Concessionaire shall be liable to pay compensation for any loss or damage to the Concessioneing Authority resulting from such rescission and the Concessioneing Authority shall be entitled to deduct the amount so payable from the money(s) due to the Concessionaire.

xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Concessioneing Authority with the Concessionaire, the same shall not be opened.

b. The decision of the Concessioneing Authority to the effect that a breach of the provisions of this Integrity Pact has been committed by the Concessionaire shall be final and binding on the Concessionaire, however, the Concessionaire can approach the monitor(s) appointed for the purposes of this Pact.

11. Fall Clause

a. The Concessionaire shall strive to accord the most favoured customer treatment to the Concessioneing Authority in respect of all matters pertaining to the present case.

12. Independent Monitors

a. The Concessioneing Authority will appoint Independent Monitors for this Pact, in consultation with the Central Vigilance Commission.

b. As soon as the Monitor notices, or believes to notice, a violation of this

For VIZAG AIRPORT PRIVATE LIMITED

Authorised Signatory

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ATTORNEY OF THE MPT BOARD  
CHIRUBUZZH/MISAKHAPATNAM

agreement, he will so inform the the Chairman, Visakhapatnam Port Trust under Ministry of Shipping.

13. Examination of Books of Accounts

In case of any allegation of violation of any provisions of this Integrity Pact or payment of commission, the Concessioneing Authority or its agencies shall be entitled to examine the Books of Accounts of the Concessionaire and the Concessionaire shall provide necessary information of the relevant financial documents in English and shall extend all possible help for the purpose of such examination.

14. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Concessioneing Authority i.e. Visakhapatnam.

15. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

16. Validity


- a. The validity of this Integrity Pact shall be from date of its signing and extend up to 30 years or the complete execution of the contract to the satisfaction of both the Concessioneing Authority and the Concessionaire, whichever is later.
- b. Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

2. The Parties hereby sign this Integrity Pact at Visakhapatnam on 18<sup>th</sup> May 2012.

CONCESSIONING AUTHORITY  
CHAIRMAN  
VISAKHAPATNAM PORT  
VISAKHAPATNAM

Fax No: +91-891-2565023

Email: info@vizagport.com

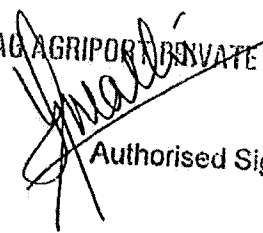
  
CHAIRMAN  
VISAKHAPATNAM PORT  
VISAKHAPATNAM

CONCESSIONAIRE

M/s. Vizag Agriport Pvt. Ltd.,  
5th Floor, Bhupati Chambers, 13 Mathew Road,  
Mumbai - 400 004

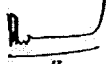
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Email: ho@abg-lda.com

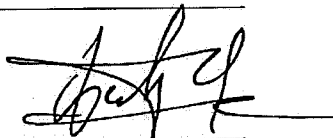
For VIZAG AGRIPORT PRIVATE LIMITED  
  
Authorised Signatory

Witness

1.

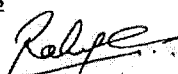


2.



Witness

1.



2.

