

# CONCESSION AGREEMENT

BETWEEN

BOARD OF TRUSTEES FOR V.O. CHIDAMBARANAR PORT TRUST  
(THE CONCESSIONING AUTHORITY)

AND

IMCOLA CRANE COMPANY PRIVATE LIMITED  
(THE CONCESSIONAIRE)

FOR

"UPGRADATION OF MECHANICAL HANDLING INFRASTRUCTURE AT V.O.CHIDAMBARANAR  
PORT TRUST (BERTHS I TO VI AND IX) THROUGH PUBLIC- PRIVATE PARTNERSHIP ON, BUILD,  
OWN AND OPERATE BASIS FOR A PERIOD OF 10 YEARS"

DATED 24<sup>th</sup> day of May, 2013



## Table of Contents

ARTICLE 1.....	4
DEFINITIONS AND INTERPRETATION.....	4
1.1 Definitions.....	4
1.2 Other References.....	13
1.3 Interpretations.....	14
1.4 Measurements and Arithmetic Conventions.....	15
1.5 Ambiguities and Discrepancies.....	15
ARTICLE 2.....	16
CONCESSION AND PORT ASSETS.....	16
2.1 Concession.....	16
2.2 Concession Period.....	16
2.3 Acceptance of the Concession.....	16
2.4 Port's Assets.....	16
2.5 Use of Port's Assets.....	17
2.6 Information about Project Site and Port's Assets.....	17
2.7 Acceptance of the Port Assets.....	17
2.8 Peaceful Occupation.....	17
ARTICLE 3.....	19
CONDITIONS PRECEDENT.....	19
3.1 Conditions Precedent.....	19
ARTICLE 4.....	22
PERFORMANCE GUARANTEE.....	22
4.1 Performance Guarantee.....	22
ARTICLE 5.....	23
INDEPENDENT ENGINEER.....	23
5.1 Independent Engineer.....	23





ARTICLE 6.....	24
PROJECT IMPLEMENTATION.....	24
6.1 Preparation of Designs and Drawings.....	24
6.2 Review of the Designs and Drawings.....	24
6.3 Construction Phase.....	25
6.4 Obligations of the Concessionaire.....	25
6.5 Obligations of the Concessioneing Authority.....	26
6.6 Suspension of Works.....	27
6.7 Issue of Completion Certificate.....	27
6.8 Change of Scope.....	28
6.9 Liquidated Damages.....	30
ARTICLE 7.....	31
OPERATIONS & MAINTENANCE .....	31
7.1(a) Obligations of the Concessionaire.....	31
(b) Rights of Concessionaire.....	35
(c) Obligations of the Concessioneing Authority.....	35
7.2 Utilities and Services.....	36
7.3 Liability for shortfall in performance.....	37
ARTICLE 8.....	38
TARIFF.....	38
8.1 Levy and Recovery of the Tariff.....	38
8.2 Collection of Cesses and Charges.....	38
ARTICLE 9.....	39
PAYMENTS TO THE CONCESSIONING AUTHORITY.....	39
9.1 License Fee.....	39
9.2 Payments of Royalty.....	39
9.3 Utilities or Services.....	40



9.4	Certified Accounts.....	40
9.5	Escrow Account.....	41
	ARTICLE 10.....	43
	ASSETS: OWNERSHIP AND PERMITTED CHARGE.....	43
10.1	Ownership of Assets.....	43
(a)	Land and Water Area.....	43
(b)	Assets created or provided by the Concessionaire.....	43
10.2	Permitted Charge on Assets.....	43
	ARTICLE 11.....	44
	SHAREHOLDING.....	44
11.1	Ownership Structure.....	44
11.2	Shareholding.....	44
11.3	Constituent Documents.....	45
	ARTICLE 12.....	46
	GENERAL RIGHTS, DUTIES AND OBLIGATIONS.....	46
12.1	Of the Concessionaire.....	46
(a)	Applicable Permits.....	46
(b)	Taxes & duties.....	46
(c)	Insurance.....	46
(d)	Indemnification.....	48
(e)	Assignability.....	48
(f)	Engagement of Contractors.....	49
(g)	Condition Survey.....	49
12.2	Of the Concessioneing Authority.....	50
(a)	Assistance in obtaining Approvals, Permits and Licenses.....	50
(b)	Taxes and Duties.....	50
(c)	Competing Facilities .....	50



(d) General rights of inspection and verification.....	51
12.3 Of the Concessioneing Authority and the Concessionaire.....	51
(a) Compliance with Laws and Regulations.....	51
(b) Rights to Documents.....	51
ARTICLE 13.....	53
CHANGE IN LAW.....	53
13.1 Change in Law.....	53
13.2 The Concessionaire's Remedy.....	53
ARTICLE 14.....	56
FORCE MAJEURE.....	56
14.1 Force Majeure Event.....	56
14.2 Non-Political Events.....	56
14.3 Political Events.....	57
14.4 Other Events.....	57
14.5 Notice of Force Majeure Event.....	58
14.6 Period of Force Majeure.....	59
14.7 Resumption of Performance.....	59
14.8 Performance Excused.....	59
14.9 Costs, Revised Timetable.....	59
(a) Costs.....	59
(b) Extension of time/period.....	59
14.10 Termination Due to Force Majeure Event.....	59
ARTICLE 15.....	61
EVENTS OF DEFAULT.....	61
15.1 Events of Default.....	61
(a) The Concessionaire Event of Default.....	61
(b) The Concessioneing Authority Event of Default.....	62





15.2	Parties Rights.....	62
15.3	Consultation Notice.....	63
15.4	Remedial Process.....	63
15.5	Obligations during Remedial Period.....	64
15.6	Revocation of Consultation Notice.....	64
15.7	Termination due to Events of Default.....	64
15.8	Concessioneing Authority's Rights of Step-in.....	64
	ARTICLE 16.....	66
	TERMINATION OF THE CONCESSION/AGREEMENT.....	66
16.1	Termination Procedure.....	66
16.2	Obligations during Termination Period.....	66
16.3	Requisition.....	66
16.4	Condition Survey.....	67
16.5	Consequences of Termination.....	67
	ARTICLE 17.....	69
	COMPENSATION.....	69
17.1	Compensation.....	69
(a)	Termination due to Force Majeure Event.....	69
(b)	Termination due to Concessionaire Event of Default.....	69
(c)	Termination due to Concessioneing Authority Event of Default.....	70
17.2	No Compensation on Expiry of Concession Period .....	70
17.3	Transfer Fee and Charges.....	70
17.4	Payment of Compensation to Lenders.....	70
17.5	Delayed Payment of Compensation.....	71
17.6	Delayed Transfer of Assets.....	71
17.7	Remedies Cumulative.....	72
	ARTICLE 18.....	73



TRANSFER ON EXPIRY OF THE CONCESSION PERIOD.....	73
18.1 General Scope of Transfer/Payment.....	73
18.2 Concessionaire's Obligations.....	73
18.3 Concessioneing Authority's Obligations.....	74
18.4 Risk.....	74
ARTICLE 19.....	75
DISPUTE RESOLUTION.....	75
19.1 Amicable Settlement.....	75
19.2 Assistance of Expert.....	75
19.3 Arbitration.....	75
(a) Arbitrators.....	75
(b) Place of Arbitration.....	75
(c) English Language.....	76
(d) Procedure.....	76
(e) Enforcement of Award.....	76
(f) Fees and Expenses.....	76
(g) Performance during Arbitration.....	76
ARTICLE 20.....	77
REPRESENTATIONS AND WARRANTIES.....	77
20.1 Representations and Warranties of the Concessionaire.....	77
20. 2 Representations and Warranties of the Concessioneing Authority.....	78
20.3 Disclosure.....	79
ARTICLE 21.....	80
MISCELLANEOUS PROVISIONS.....	80
21.1 Datum.....	80
21.2 Survival of Obligations.....	80
21.3 Articles to survive Termination.....	80





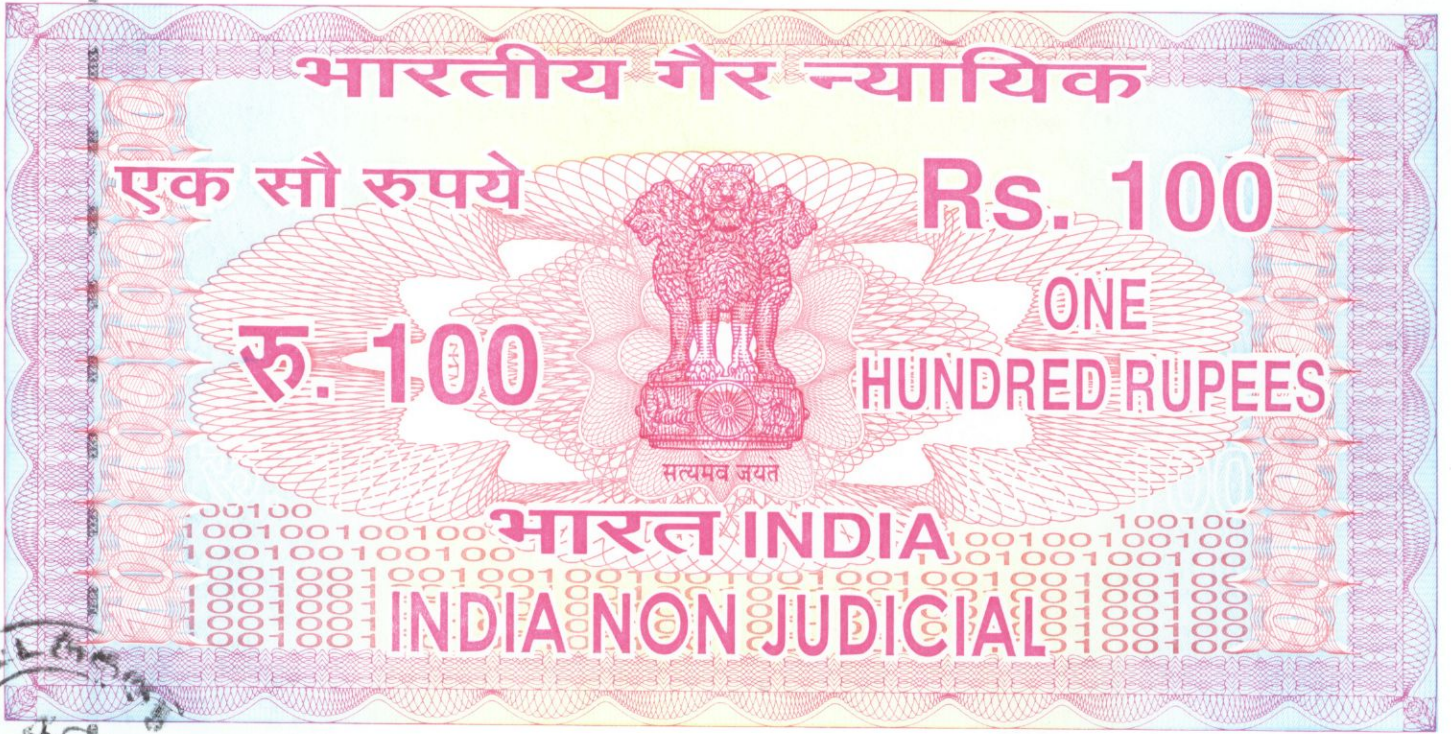
21.4 Joint Responsibility.....	80
21.5 Several Obligations.....	80
21.6 Severability.....	80
21.7 Notices.....	81
21.8 Waiver.....	81
21.9 Amendments, Modifications or Alterations.....	81
21.10 Governing Law.....	82
21.11 Entire Agreement.....	82
APPENDIX 1.....	83
PROJECT SITE.....	83
APPENDIX 2.....	84
PORT'S ASSETS.....	84
APPENDIX 3.....	85
SUBSTITUTION AGREEMENT.....	85
APPENDIX 4.....	95
PROJECT REQUIREMENTS.....	95
APPENDIX 5.....	108
PROJECT SCHEDULE.....	108
APPENDIX 6.....	109
DESIGNS AND DRAWINGS.....	109
APPENDIX - 7.....	110
TERMS OF REFERENCE FOR INDEPENDENT ENGINEER.....	110
APPENDIX 8.....	113
PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/CONCESSIONING AUTHORITY.....	113
APPENDIX 9.....	114
PERFORMANCE GUARANTEE.....	114
APPENDIX 10.....	118



CERTIFICATES.....	118
APPENDIX 11.....	120
PERSONNEL AND LABOUR REQUIREMENTS.....	120
APPENDIX 12.....	121
TARIFFS.....	121
APPENDIX 13.....	122
RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES.....	122
APPENDIX 14.....	182
MINIMUM GUARANTEED AVAILABILITY PERCENTAGE.....	182
AND MINIMUM GUARANTEE EFFICIENCY OF HARBOUR MOBILE CRANES.....	182
APPENDIX 15.....	183
PERFORMANCE STANDARDS.....	183
APPENDIX 16.....	188
ESCROW AGREEMENT.....	188







தமிழ்நாடு தமில்நாடு TAMILNADU

Rs: 100/-

No: 026

Date: 23/5/2013

IMCOLA CRANE COMPANY  
PVT LTD

AL 626427

P.G. MURALI KRISHNAN  
STAMP VENDOR  
No: 21, VALLABHA AGRAHARAM STREET,  
TRIPPLICANE, CHENNAI-600 005.  
L.No: B-3-13827 / 93  
Phone: 28544252

### CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at Tuticorin on this the 24<sup>th</sup> day of May 2013  
BETWEEN

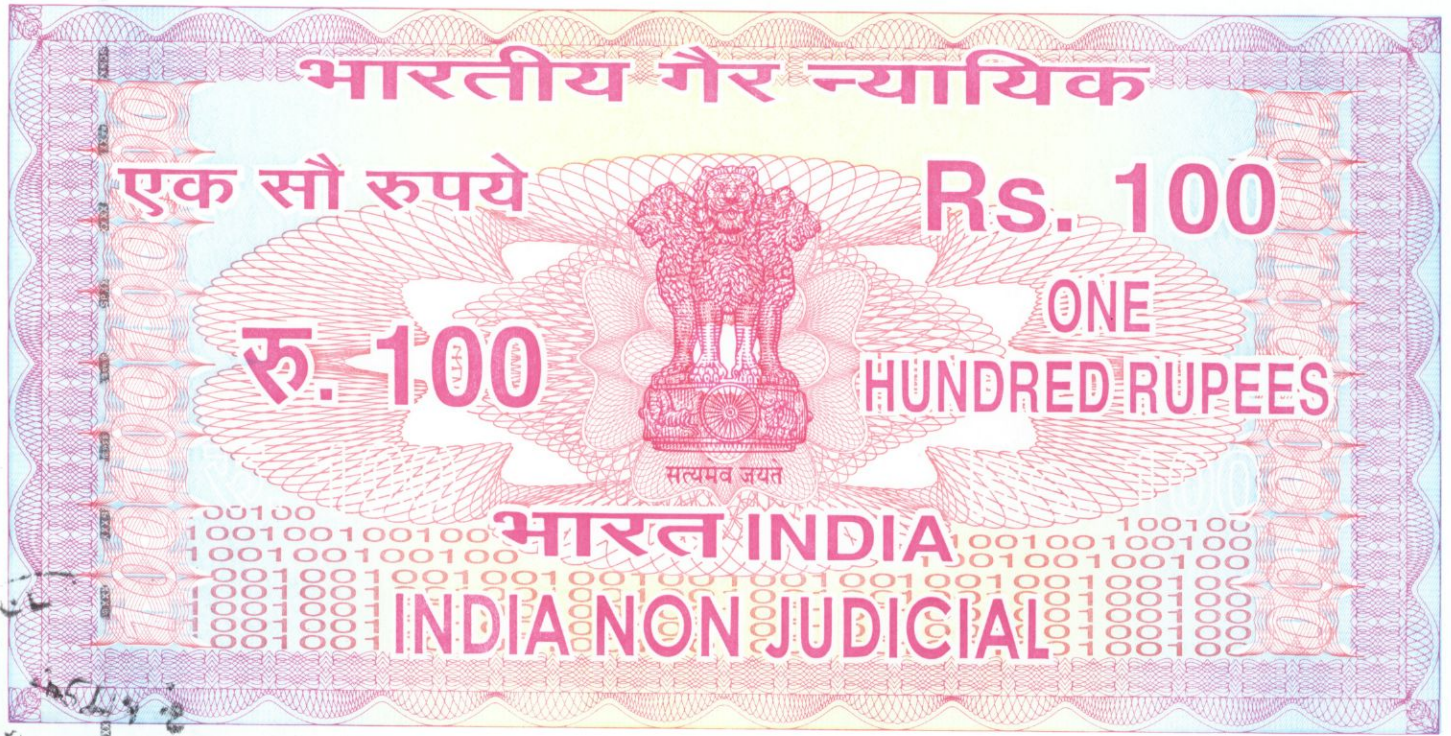
1. BOARD OF TRUSTEES for V.O. Chidambaranar Port Trust, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at V.O. Chidambaranar Port Trust, Tuticorin – 628 004 hereinafter referred to as “the Concessioning Authority” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

2. IMCOLA Crane Company Private Limited, a company registered under the Companies Act, 1956, and having its registered office at “NEELADRI”, 3<sup>rd</sup> Floor, No.9, Cenotaph Road, Alwarpet, Chennai- 600018, Tamilnadu hereinafter referred to as “the Concessionaire” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).







தமிழ்நாடு தமில்நாடு TAMILNADU

Rs: 100/-

No: 027

Date: 23/5/2013

IMCOLA CRANE COMPANY  
PVT LTD

AL 626428

P. G. MURALI KRISHNAN  
STAMP VENDOR  
No: 21, VALLABHA AGRAHARAM STREET,  
TRIPPLICANE, CHENNAI-600 005.  
L.No: B-3-13827 / 93  
Phone: 28544252

**WHEREAS:**

(A) The Concessioneing Authority is desirous of implementing a Project (as defined hereinafter) for "Upgradation of Mechanical Handling Infrastructure at V.O. Chidambaranar Port Trust (Berths I to VI & IX) through Public Private Partnership on, Build, Own and Operate Basis for a period of 10 years" through private sector participation;

(B) In or about October, 2012, the Concessioneing Authority invited applications

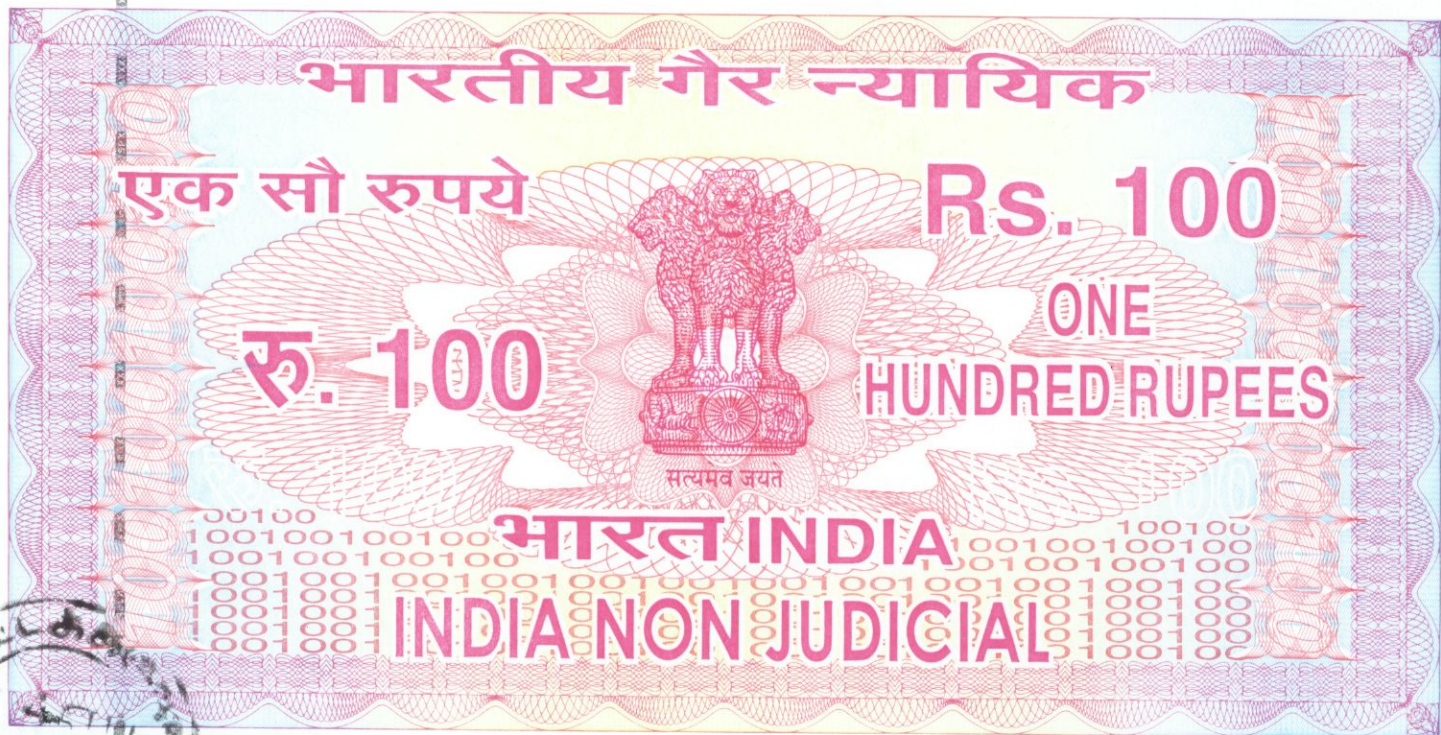
1 To provide in brief the nature of the facilities e.g. Container handling/bulk cargo/liquid cargo/others. from the interested parties in accordance with the Request for Qualification (as defined hereinafter), to shortlist competent parties that can subsequently bid for the Project;

(C) In response to the invitation referred to in recital 'B' above, the Concessioneing Authority received applications from various parties including the application dated 2.11.2012 submitted by the Applicant/ Consortium in accordance with the Request for Qualification;

(D) The Concessioneing Authority, after evaluating all the applications, shortlisted 3 (three) number of applicants including the Applicant/Consortium and invited proposals from them in accordance with the Request for Proposal (as defined hereinafter), for implementing the Project;







தமிழ்நாடு தமில்நாடு TAMILNADU

Rs: 100/-

No: 028

IMCOLA CRANE COMPANY  
PVT LTD

Date: 23/5/2013

AL 626429  
P.G. MURALI KRISHNAN  
STAMP VENDOR  
No: 21, VALLABHA AGRAHARAM STREET,  
TRIPPLICANE, CHENNAI-600 005.  
L.No: B-3-13827 / 93  
Phone: 28544252

(E) In response to the Request for Proposal, the Concessioneing Authority received proposals from the shortlisted applicants including the one submitted by the Applicant/Consortium;

(F) The Concessioneing Authority, after evaluating all the proposals received by it from the shortlisted applicants, accepted the proposal referred to in recital "E" above submitted by the Applicant/Consortium and communicated its acceptance to the Applicant/Consortium vide Letter of Intent for Award of Concession dated 25.03.2013;

(G) The Applicant/Consortium has/have incorporated the Concessionaire as a special purpose company in India, under the Companies Act, 1956 to implement the Project;

(H) Following the issue of the Letter of Intent for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:





## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

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

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

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

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

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

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

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

**"Applicable Permits"** means any and all permissions, clearances, licenses, authorizations,



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

**"Applicant"** means [•] Not Applicable

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

**"Bid Security"** means the bank guarantee of Rs.49.20 Lakhs (Rupees Forty nine lakhs and twenty thousand only)] dated 06.02.2013 furnished by the Applicant/Consortium alongwith its Bid.

**"Board"** means the Board of Trustees for the V.O. Chidambaranar Port, Tuticorin.

**"Book Value"** means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, which in the reasonable judgement of an Expert are capable of being put to use/utilized by the Concessioneing Authority, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, which the Concessioneing Authority agrees to take over, inaccordance 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 Concessioneing Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

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

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

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





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

**"Consortium"** means the consortium consisting of (i) IMC Limited having its registered office at 232/A, A.J.C. Bose Road, Kolkata - 700020, and (ii) PSTS Logistics Private Limited having its registered office at II Floor, WAVOO Mansion, 48, Rajaji Salai, Chennai – 600001 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.49.20 Crores (Rupees Forty nine Crores and twenty lakhs 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 Applicant/Consortium have become effective and the Concessionaire has access to such Financial Assistance.

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

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

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

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

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

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

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

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

**"Independent Engineer"** means a Person appointed in accordance with Article 5.1 for





supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Appendix 7.

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

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

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

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

**"Management Contract"**<sup>1</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>2</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.

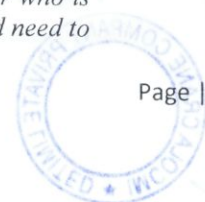
**"Non Political Event"** means the Force Majeure Events set out in Article 14.2.

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

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<sup>1</sup>This definition may be included only in cases where such a contract is envisaged.

<sup>2</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



**"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.

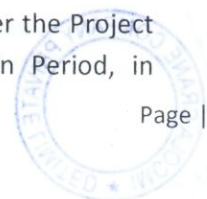
**"Port Limits"** means the boundary of V.O. Chidambaranar Port Trust, Tuticorin – 628 004.

**"Project"** means the deployment, 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 8.72 Million Tonnes of cargo 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 November 2012 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 dated October 2012 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.

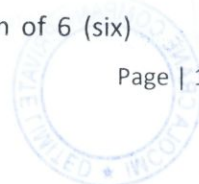
**"Requisition"** has the meaning ascribed to it in Article 16.3.

**"Royalty"** means the 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, 1963 as applicable.

**"Scheduled Project Completion Date"** means the Day ending on the completion of 6 (six)



months from the date of award of Concession.

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

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

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

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

**"Supporting Project Infrastructure"** means:

- (a) Maritime access channels;
- (b) Port entrance
- (c) protective works including breakwaters, shore protection;
- (d) sea locks
- (e) access to port for inland transport (including roads, bridges and tunnels);
- (f) rail connections between hinterland and port; 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. TAMP/50/2011-VOCPT dated 24.01.2012 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 V.O. Chidambaranar Port Trust

**"Transfer"** means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in



any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire.

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

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

## 1.2 Other References

In this Agreement:

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

**"BS"** means British Standard.

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

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

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

**"IS"** means Indian Standard.

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

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

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

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

**"km"** means Kilometre, the unit of length.

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

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

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

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

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





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

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

"OISD" means Oil Industry Safety Directorate.

"VAT" means Value Added Tax.

### 1.3 Interpretations

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

In this Agreement unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) the words "include" and "including" are to be construed without limitation;
- (e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;



- (h) any reference to month shall mean a reference to a calendar month;
- (i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
- (k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- (l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- (m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and
- (n) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

#### 1.4 Measurements and Arithmetic Conventions

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

#### 1.5 Ambiguities and Discrepancies

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

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





## ARTICLE 2

### CONCESSION AND PORT ASSETS

#### 2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioneing Authority (a) the License Fee and (b) Royalty, and performing its obligations as set out in this Agreement, the Concessioneing Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for Financing, procurement, commissioning, operation and maintenance of 2 nos. of Harbour Mobile cranes as specified in the RFQ

#### 2.2 Concession Period

The Concession hereby granted is for a period of 10 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 10 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.

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

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

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

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

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

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

- (a) inspected the Project Site/Port's Assets, along with 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 handed over to the concessionaire 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 Concessioning Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.





## ARTICLE 3

### CONDITIONS PRECEDENT

#### 3.1 Conditions Precedent

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

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

- (i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;
- (ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
- (iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
- (iv) Opening the Escrow Account and executing the Escrow Agreement;
- (v) Furnishing a copy of the Management Contract;<sup>3</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 Concessions Authority under Article 3.1 (b) hereunder;
- (viii) Procuring and furnishing the following confirmations, in original, from the Applicant/members of Consortium:
  - (a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
  - (b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
  - (c) the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the

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<sup>3</sup>To be retained where relevant i.e. where on the strength of the Management Contract the consortium has qualified technically.



Concessione 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 Concessione Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and

(x) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in Appendix 8.

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

(i) procurement of the clearances required for the Project, as set out in Appendix 8;

(ii) handing over physical possession of the Project Site and/or the Port's Assets for the purposes of the Project;

(iii) provision of putting in place arrangements for the provision of Supporting Project Infrastructure by the Concessione Authority

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 Concessione Authority at any time in its sole discretion or the Concessione 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 Concessione 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 Concessione 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 Concessione Authority), the Concessione 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 Concessione 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 Tuticorin 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. 2.46 Crores (Rupees Two crores and forty six lakhs only). Till such time the Concessionaire provides to Concessioneing Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioneing Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 2.46 Crores (Rupees Two crores and forty six lakhs only) is available in immediate cash to the Concessioneing Authority for the entire period of the Construction Phase.

The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the Date of Commercial Operations. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

If any one of the crane is not available for operation for a period exceeding 90 days continuously, the performance guarantee will be encashed by the port. If the Concessionaire desires to substitute any of the approved cranes due to break downs/repair/ services etc, this should be done only after obtaining prior approval from the Chief Mechanical Engineer. The substitute crane should strictly conform to the tender specification.





## 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 therefor, 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.



## 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.

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 [6] Months from the date of commencement of the Concession Period.

### 6.4 Obligations of the Concessionaire

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

- (a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.
- (b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- (c) give written notice to the Concessioneing Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessioneing Authority. Provided no such modification/ amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioneing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioneing Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioneing Authority will not be enforceable against the Concessioneing Authority;
- (d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give



priority to safety in its construction and planning activities in order to protect life, health, property and environment;

(e) provide to the representative(s) of the Concessioneing Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of this Agreement. Provided that non-inspection by the Concessioneing Authority of any works shall not, in relation to such works, (i) amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

(f) provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;

(g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Agreement; and

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

## 6.5 Obligations of the Concessioneing Authority

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

(a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;

(b) make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under this





Agreement;

(c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act;

(d) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and

(e) subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

#### **6.6 Suspension of Works**

(a) Upon recommendation of the Independent Engineer to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioneing Authority, such work is not in accordance with the Construction Standards / Safety Standards.

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

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

(a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards ("the Tests").



The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessions 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 Concessions 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 Concessions Authority a Completion Certificate substantially in the form set forth in Appendix 10;

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

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

## 6.8 Change of Scope

(a) The Concessions Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement ("Change of Scope"). Provided





no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to [5% (five percent)] of the Estimated Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to [20% (twenty percent)] of the Estimated Project Cost ;

(b) If the Concessioneing Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice");

(c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioneing Authority, the following:

(i) the adverse impact, if any, which the Change of Scope is likely to have on the Project; and

(ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;

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

(e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;

(f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneing Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneing





Authority shall disburse to the Concessionaire such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope;

(g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessions Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessions Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.





## ARTICLE 7

### OPERATIONS & MAINTENANCE

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

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

(i) **Berth and Terminal Operations:** Upgradation of Mechanical handling infrastructure at V.O.Chidambaranar Port Trust (Berths I to VI and IX) through PPP mode on Build, own and operate basis for a period of 10 years.

#### 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 least with the Project Requirements;

(d) ensure compliance of the Project Facilities and Services at least with the Performance Standards;

(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;

(f) minimize disruption to traffic in the event of accidents or other incidents affecting 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, 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.

**(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, percentage availability on daily basis, unit gross output/ discharge rates at berth, no. of hours /shifts of operation and tonnage handled and monthly availability statement. 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 Guarantee availability and Minimum Guarantee efficiency**

The Concessionaire hereby unconditionally guarantees the Concessioneing Authority the minimum guarantee availability and minimum guarantee efficiency as 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 [30] 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 shippinglines or vessel owners/operators to optimize the use of the Project Facilities and Services. Such preferential or priority berthing shall be subject to the priority berthing norms as may be mutually determined by the Parties in accordance with Applicable Laws or guidelines issued by the Government from time to time in respect thereof, if any.

**(ii) Unclaimed cargo**

The Concessionaire may at its cost:

(a) after obtaining prior written approval of the Commissioner of Customs or other competent Government Authority and in accordance with the provisions of Applicable Law, destroy or dispose off by way of public auction and/or tender, any unclaimed cargo, the charge of which has been taken by Concessionaire under or pursuant to this Agreement, and always subject to provisions of MPT Act and other laws in this regard.

(b) Institute proceedings for recovery of unrealized charges, if any, in its name and/or defend any claim made in respect of such cargo by consignee/owners. The Concessioning Authority agrees to provide all reasonable assistance necessary in this regard to the Concessionaire.

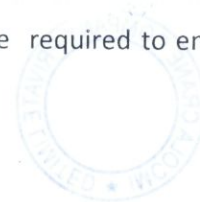
**(c) Obligations of the Concessioning Authority**

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

**(i) Marine and Port Services:**

The Concessioning Authority shall provide/ cause to be provided,

- (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 12.8m;
- (c) waterside safety and safety of navigation;
- (d) maintenance of the dredged draft alongside the berth at 12.8m.
- (e) 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 Concessions 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 Concessions 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 Concessions Authority:

(a) the power made available shall be as received by the Concessions Authority from Tamil Nadu Electricity Board. The take off point for electricity shall be from the sub station at .....

(b) the water made available shall be as received by the Concessions Authority from [Tamil Nadu Water Supply and Drainage Board] 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 Concessions Authority, install meters to measure the consumption of power and water. The Concessions Authority does not warranty the reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;





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

### 7.3 Liability for shortfall in performance

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

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



## ARTICLE 8

### TARIFF

#### 8.1 Levy and Recovery of the Tariff

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

#### 8.2 Collection of Cesses and Charges

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





## ARTICLE 9

### PAYMENTS TO THE CONCESSIONING AUTHORITY

#### 9.1 License Fee

(a) The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.4, pay to the Concessioneing Authority the sum of **Rs [21,150/-]** (Rupees Twenty one thousand one hundred and fifty Only) **per crane per annum** (as specified in the bid documents) (the "License Fee") towards License Fee for entry of equipments into Zone –A of this Port. Such amount shall be paid by the Concessionaire in yearly instalments in advance. The License Fee payable each year shall vary depending on Port's prevailing Scale of Rates.

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

#### 9.2 Payments of Royalty

(a) The Concessionaire shall pay to the Concessioneing Authority Royalty per Month equivalent to **26.55% (Twenty six and decimal five 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 or Services

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

### 9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, ship/vessel/user wise information, and, as relevant, the details of cargo handled by category, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessioneing Authority a financial statement of the Gross Revenue for every 6 (six) monthly period ending 30th September and 31st 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 Concessing 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 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 Concessing 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 Concessing 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 Concessing 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 Concessing 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, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and/or in the Port's Assets pursuant to this Agreement shall, until expiry of this Agreement or transfer to the Concessioneing Authority on Termination in accordance with this Agreement, be with the Concessionaire. However, such ownership of buildings etc. erected by the Concessionaire at the Project Site shall not be construed as and shall not confer any rights in the Project Site or other Port's Assets upon the Concessionaire, save as that of a bare licensee as provided for in this Agreement.

#### 10.2 Permitted Charge on Assets

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

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

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



## ARTICLE 11

### SHAREHOLDING

#### 11.1 Ownership Structure

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

- |                                   |                      |
|-----------------------------------|----------------------|
| 1. IMC LIMITED                    | 80% (Eighty Percent) |
| 2. PSTS LOGISTICS PRIVATE LIMITED | 20% (Twenty Percent) |

#### 11.2 Shareholding

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

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

(b) M/s IMC Limited ("Lead Member") legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium's holding in the paid up equity capital of the Concessionaire.

Notwithstanding the aforesaid, any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioning 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 Concessioning Authority as stated hereinbefore and in accordance with the Financing Documents.





### 11.3 Constituent Documents

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

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



## ARTICLE 12

### GENERAL RIGHTS, DUTIES AND OBLIGATIONS

#### 12.1 Of the Concessionaire

##### (a) Applicable Permits

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

##### (b) Taxes & duties

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

##### (c) Insurance

###### (i) Insurance Requirement

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

- (a) builder's all risk insurance;
- (b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- (c) comprehensive third party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;
- (d) workmen's compensation insurance;
- (e) marine cum storage cum erection insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).





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

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

**(iii) Evidence of Insurance Cover**

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

**(iv) Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged.

The Concessionaire may designate the Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

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

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



**(vi) Waiver of Subrogation**

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

**(d) Indemnification**

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

**(e) Assignability**

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

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





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

**(f) Engagement of Contractors**

The Concessionaire 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 2.46 crores (Rupees two crores and forty six lakh 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 with respect to scope of the current project\_ either on its own or through any other Person until the earlier of (i) 5 (five) years from the Scheduled Project Completion Date; or (ii) the average annual volume of cargo handled at the Project Facilities and Services reaches a level of 75% (seventy five percent) of Project Capacity for 2 (two) consecutive years ("Exclusivity Period").





Provided, this restriction shall not apply to the additional facility envisaged at 9th berth and proposed outer harbor project

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

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

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

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

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

**(b) Rights to Documents**

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

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

**(ii) Concessionaire's Documents**

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

**(iii) Confidentiality**

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



**(iv) Obligation to Cooperate**

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

**(v) Substitution Agreement**

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





## ARTICLE 13

### CHANGE IN LAW

#### 13.1 Change in Law

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

(a) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or

(b) the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this Agreement impossible or unviable; or

(c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

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

#### 13.2 The Concessionaire's Remedy

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

(b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary



measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 3.44 crores may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost upto Rs.3.44 crores (Rupees three crores and forty four lakhs only) in any accounting year shall be borne by the Concessionaire;

(c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioneing Authority, of the following:

- (i) the particulars, nature and the impact of Change in Law on the Project;
- (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
- (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

(d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article(c), the Concessioneing Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.

(e) If it is determined that the only material impact of a Change in Law is Additional Cost and the Concessioneing Authority opts to compensate the same in accordance with the preceding sub-article (b), the Concessionaire shall not be entitled to any other remedy nor shall seek any alterations to the Agreement and the Concessioneing Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessioneing Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:

- (i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;
- (ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at SBI PLR + 2% (two percent) on the amount the payment of which is deferred.

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

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs. 3.44 crores (Rupees three crores and forty four lakhs only) in any Financial Year, the Concessionaire shall notify the Concessioneing





Authority and pay to the Concessioneing Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid. Without prejudice to the aforesaid, the Concessioneing Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit.

The Concessionaire shall make payment of such compensation within sixty (60) Days of the said financial benefit. If the Concessionaire shall dispute the quantum of such compensation claim of the 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 Costs, Revised Timetable**

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

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

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

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





## 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;
- (vii) the Concessionaire fails to achieve Minimum Guaranteed availability for a consecutive period of 3 (three) months. Provided, the Concessionaire shall not be deemed to be in default if such non achievement is due to a substantial change in economic policies including the policy regarding import/export of a particular commodity as a result of which the throughput could not be achieved;
- (viii) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- (ix) the Concessionaire passing a resolution for voluntary winding up;
- (x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (xi) occurrence of default under the Financing Documents pursuant to which the Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;



- (xii) levy of an execution or distraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period exceeding 90 (ninety) Days;
- (xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;
- (xiv) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- (xv) a change in shareholding such that the beneficial interest of the Applicant/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- (xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and
- (xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.

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

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

**15.2 Parties Rights**

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





Agreement be entitled to terminate this Agreement.

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

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

### 15.3 Consultation Notice

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

### 15.4 Remedial Process

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

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



- (v) acceptance by the Selectee of any amounts due to the Concessioneing 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.



## 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 Concessions 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 Concessions Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessions Authority to estimate the likely compensation payable by the Concessions Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessions Authority.

- (a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Lenders' certificate;
- (b) data or records [to be specified by Concessions Authority] regarding the operation and maintenance of the Project Facilities and Services;
- (c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and
- (d) any other information or records [to be specified by Concessions Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.





The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition furnish the particulars called for by the Concessioneing Authority.

#### 16.4 Condition Survey

(a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessioneing Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Port's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessioneing Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Concessioneing Authority on the Transfer Date.

(b) If, as a result of the condition survey, the Concessioneing Authority shall observe/notice that the Project Site and/or the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.

(c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessioneing Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessioneing Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

#### 16.5 Consequences of Termination

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

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

(b) the Concessioneing Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessioneing Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in accordance with Article 17 in the Escrow Account,



the Concessing 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 hand back of the Project Site/Port Assets/Project Facilities & Services by the Concessionaire to the Concessing Authority shall be free from any such obligation.





## ARTICLE 17

### COMPENSATION

#### 17.1 Compensation

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

(i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to a Other Event compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Actual Project Cost.

(iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioneing Authority Event of Default under Article 17.1 (c).

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

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

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

(i) the Book Value;



(ii) 90% (ninety percent) of Debt Due;

(iii) the Actual Project Cost;

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

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

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

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

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

**17.3 Transfer Fee and Charges**

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

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

**17.4 Payment of Compensation to Lenders**

The Concessionaire hereby irrevocably authorises the Concessioneing Authority to pay to the Lenders or at their instruction to any designated bank account in India the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioneing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of its assets taken over by the Concessioneing Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessioneing Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessioneing Authority in respect of Concessioneing Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.





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

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

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

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

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

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

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



### 17.7 Remedies Cumulative

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





## ARTICLE 18

### TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

#### 18.1 General Scope of Transfer/Payment

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

#### 18.2 Concessionaire's Obligations

The Concessionaire shall;

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



termination is on account of Concessioneing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioneing Authority;

(g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site/Port's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessioneing Authority in terms of the provisions of this Agreement.

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

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

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

### **18.4 Risk**

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





## ARTICLE 19

### DISPUTE RESOLUTION

#### 19.1 Amicable Settlement

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

#### 19.2 Assistance of Expert

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

#### 19.3 Arbitration

##### (a) Arbitrators

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

##### (b) Place of Arbitration

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



**(c) English Language**

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

**(d) Procedure**

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

**(e) Enforcement of Award**

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

**(f) Fees and Expenses**

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

**(g) Performance during Arbitration**

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





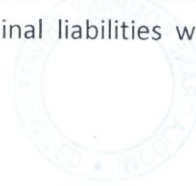
## ARTICLE 20

### REPRESENTATIONS AND WARRANTIES

#### 20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

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



aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(j) all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioneing Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing The Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority in connection therewith;

(m) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and

(n) consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

## **20. 2 Representations and Warranties of the Concessioneing Authority**

The Concessioneing Authority represents and warrants to the Concessionaire that:

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

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





### 20.3 Disclosure

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



## ARTICLE 21

### MISCELLANEOUS PROVISIONS

#### 21.1 Datum

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

#### 21.2 Survival of Obligations

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

#### 21.3 Articles to survive Termination

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

#### 21.4 Joint Responsibility

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

#### 21.5 Several Obligations

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

#### 21.6 Severability

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





### 21.7 Notices

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

The Concessioneing Authority:

CHAIRMAN

V.O.CHIDAMBARANAR PORT TRUST

Tuticorin – 628004

Tamil Nadu

Fax No: +91 461 2354274

Email: [info@vocport.gov.in](mailto:info@vocport.gov.in)

The Concessionaire:

The DIRECTOR

IMCOLA Crane Company Private Limited

“Neeladri”, 3<sup>rd</sup> Floor,

No.9, Cenotaph Road,

Alwarpet,

Chennai – 600018

Tamil Nadu

Fax No.+91 44 45902200

Email: [jayesh@imc.net.in](mailto:jayesh@imc.net.in) and [natarajan@imc.net.in](mailto:natarajan@imc.net.in)

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

### 21.8 Waiver

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

### 21.9 Amendments, Modifications or Alterations.

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



### 21.10 Governing Law

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

### 21.11 Entire Agreement



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

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

Common Seal of the Concessing Authority is affixed pursuant to its resolution dated 22.3.2013 of the Board in the presence of Mr. S. NATARAJAN who has signed this Agreement in token thereof.

  
CHAIRMAN  
V.O. CHIDAMBARAMAN PORTTRUST  
TUTICORIN - 628 004.

Signed and Delivered by the Concessionaire by the Hand of its authorized representatives M/s. R Natarajan and Jayesh Bhatt pursuant to Resolution dated 23.05.2013 of its Board of Directors.

For IMCOLA CRANE COMPANY PRIVATE LIMITED  
   
Authorized Signatory





## APPENDIX 1

### PROJECT SITE

[Description of Project Site will be included here]

The proposed Harbour Mobile Cranes are to be deployed in Berth Nos. I to VI & IX as detailed below

#### Facilities at V.O.Chidambaranar Port

Berth	Name	Quay Length (M)	Max draught (m)
I	VOC I	168	9.3
II	VOC II	168	9.3
III	VOC III	192	10.7
IV	VOC IV	192	10.8
V	V- Additional Berth	168	8.6
VI	VI - Additional Berth	168	9.3
IX	IX Berth	334	12.8

Berth No.I,II, III & IV are connected by Broad Gauge Railway Line.

#### Electricity, Road and Water:

In the back-up area high mast lighting arrangements and water connection are provided by the Port. However, water and electricity charges for the Concessionaire workshop, office premises have to be paid by the Concessionaire, if applicable. Road connectivity also provided by the Port to the above said berths.



## APPENDIX 2

### PORT'S ASSETS

The Port's Assets handed over will be given - Not applicable





### APPENDIX 3

#### SUBSTITUTION AGREEMENT

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

AMONGST,

THE \_\_\_\_\_ TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at \_\_\_\_\_ (hereinafter referred to as "**the Concessioneing Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

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

AND

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

OR

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

WHEREAS,

a) The Concessioneing Authority for implementing a Project envisaging \_\_\_\_\_ by private sector participation (hereinafter referred to as "**the Project**"), has by the Concession Agreement dated ----- entered into between the 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 Concessioneing Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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





## ARTICLE 2

### ASSIGNMENT

#### 2.1 Assignment of rights and title

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

## ARTICLE 3

### SUBSTITUTION OF THE CONCESSIONAIRE

#### 3.1 Rights of substitution

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

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

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

(vi) This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.

(vii) The consultation, recommendation or approval of the Lenders’ Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.





(viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.

(ix) The Concessionaire agrees and acknowledges that it shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

(x) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.

(xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.

(xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

#### SCHEDULE A

#### PARTICULARS OF FINANCIAL ASSISTANCE.

Name and address of the Lender	Nature and amount of Financing Assistance

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

SIGNED AND DELIVERED ON BEHALF OF

-----LIMITED

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

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF  
GOVERNMENT OF INDIA



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

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

----- ON BEHALF OF THE

LENDERS SETFORTH IN SCHEDULE I

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

Name :





## APPENDIX 4

### PROJECT REQUIREMENTS

[This Appendix shall contain the key project requirements and the Construction Standards, Operations and Maintenance Standards and Safety Standards. The indicative standards and norms in this regard have been set out in the annexure.]

Project Facilities and Services:

Technical Specifications of the required two numbers 120T Harbor Mobile crane may be as follows:

Lifting capacity with hook	Not less than 120T at minimum outreach of 10.5 Mtrs.
Lifting capacity with four ropes grab	Not less than 75T at minimum outreach of 10.5Mtrs.
Uniform load distribution	Less than 3 Tons per sq..m
Lower or hoisting level	Not less than 14m below wharf Not less than 29m above wharf at maximum radius Not less than 44m above wharf at minimum radius
Reach	Maximum Outreach shall not be less than 48m
Mode of operation	Both hook and grab
<b>Speed:</b> Hoisting/Lowering Slewing Luffing Traveling	Not less than 120m/min. Not less than 1. 6 r.p.m Not less than 85m/min. Not less than 5Km/hr.
Grabs – 2 Nos. per crane (one for handling coal and other for handling fertilizers and copper concentrate)	Suitable for handling copper concentrate, fertilizer, sulphur, coal etc. of density varies from 0.8MT/m3 to 2. 0MT/m3
Year of manufacture	Brand New Crane

1. Applicants/Bidders are required to supply and operate the above said Harbour Mobile Cranes (2 nos) of Brand New Crane including operation and maintenance of 24 Hrs. for a period of 10 years. Concessionaire shall take back the deployed cranes and grabs after completion of 10 years period.



2. The Applicant/Bidders shall deploy all the specified cranes within 6 months from the date of award of contract. However, successful bidder has to give the undertaking regarding deployment of cranes within 6 months and submit relevant documents.
3. Experience/Qualified Technicians/Staff are to be employed by the Applicant/Bidders as per guidelines of the Labour Act and IDLR Act to operate and maintain the cranes round the clock for cargo handling operations.
4. The concession period shall be 10 years from the date of award of Concession.
5. The Harbour Mobile Cranes offered shall be Brand New Crane.
6. The proposed HMCs shall be used only for unloading and loading of cargoes from and into the ship,. The proposed cranes shall not be used for any other purposes with out obtaining written permission from the Authority.
7. The proposed Harbour Mobile Cranes are required to work in berth Nos. I, II, III, IV V, VI and IX at the discretion of VOC Port Trust.
8. The concessionaire shall carry out repair, maintenance and operation of the proposed harbour mobile cranes at their own cost.
9. The concessionaire shall collect crane hire charges from the port users directly, as per the tariff approved by TAMP.
10. Compliance with Indian Dock Labour regulations, contract Labour Act, Motor Vehicle Act, Insurance for men and machines covering all risks and other statutory laws etc shall be ensured by the concessionaire during the concession period.
11. Land charges, electricity charges, water charges and entry permit fee and other applicable charges will be borne by the concessionaire as per the scale of rates of the Authority.
12. Safety precautions as per statutory requirements and IMO guidelines shall also be complied with.
13. The Concessionaire shall ensure compliance to Quality, Environmental, Occupational Health Safety and ISPS Codes.
14. The proposed HMCs shall be used only for unloading and loading of cargoes from and into the ship. Concessionaire shall get approval from the port official for handling other cargo/other operations. Bidder has to pay revenue share for this purpose due to the port. Concessionaire should ensure that ship operation does not get affected due to handling of other cargo. If re-loading comes in the way of ship operation 'alongside ship' the same will be construed as ship operation using the crane.





15. In berth No. V, VI and IX exclusive usage is envisaged in addition to ship gears. In the berth I to IV the demand will be over and above the usage of Port Wharf Cranes and ship gears.

16. Concessionaire shall register the request for Harbour Mobile Crane received from various port users through on-line which shall have an access to Traffic Department of VOC Port Trust.. The allotment of the HMC's made by the concessionaire shall be with the approval of Traffic Manager, VOC Port Trust or his representative.

17. The Port's decision for allotment of HMC shall be binding on the Concessionaire.

18. If any one of the crane is not available for operation for a period exceeding 90 days continuously, the performance guarantee will be encashed by the port. If the Concessionaire desires to substitute any of the approved cranes due to break downs/repair/ services etc, this should be done only after obtaining prior approval from the Chief Mechanical Engineer. The substitute crane should strictly conform to the tender specification.

19. The existing port cranes will continue to operate. In addition, vessels have option to use ship gears.

20. Concessionaire shall unconditionally guarantees the concessioning Authority the minimum guarantee availability of 90% per crane per month. The availability shall be calculated for each crane/ each month.

21. Concessionaire shall handle mimimug cargo as detailed below per day (24 Hrs of actual working) per crane or tonnage of proportionate hours of actual working.

For Dry Bulk Cargo - 12500 Metric tonnes(average)/per day per crane

For Break Bulk Cargo

Steel and Bagged Cargo - 6000 Metric tonnes(average)/per day per crane

Others - 3750 Metric tonnes(average)/per day per crane

## **22. Penalty if Minimum Guaranteed Availability is not achived**

Since the hire of crane is based on tonnage, 25% of revenue share applicable to shortfall in working hours below 90% multiplied by normative tonnage (lowest tonnage among various cargo groups) and multiplied by the rate applicable for normative tonnage under the head "Foreign" will be collected as penalty.

## **23. Penalty if the Minimum Guaranteed Efficiency is not achieved**

Penalty will be levied for the short fall in the Minimum Guaranteed Efficiency at a rate of 25% of the revenue share corresponding to the short fall in the tonnage multiplied by the rate applicable for normative tonnage under the head "Foreign"



**Note :** i) The Minimum Guaranteed Availability of Harbour mobile cranes and Minimum Guaranteed Efficiency will be monitored by Traffic Department of V.O.Chidambaranar Port Trust  
ii) The short fall in availability and efficiency will be attested by Port's Traffic Department Officials and concessionaire's representative daily.

24.The availability of the equipment (Harbour Mobile Cranes) and the volume of cargo handled by the Concessionaire will be monitored by the Traffic Department of V.O. Chidambaranar Port Trust.

25. Every precaution shall be taken by the concessionaire to prevent air and water pollution resulting from the operation as per requirement of appropriate authority. The hazardous waste shall be disposed off only to the genuine processors having requisite approval in accordance with implementation of Hazardous Waste Rule 1989 notified under Environmental Act 1989 and rules regulations made there and then from time to time. The Concessionaire shall meet the requirements Environmental management system (ISO – 14001: 2004)





## Annexure

### CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

[Indicative and minimum standards and norms for various kinds of projects are prescribed herein. Concessioning Authority may modify these and customize them to suit project requirements.]

#### 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 14001:2004 & ISPS code) 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.

#### 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 Sa2,5 or SIS ST3, SIS 055900 surface preparation
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## **General**

IS 13867: Part 1: 1992	Safe use of Cranes - Code of Practice Part 1 General
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## Classification of Crane

### Structures

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

### Mechanism

#### Class of Utilization State of Loading Group Classification

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

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

### C-3 Mobile Equipment

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





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

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

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

#### ***Idlers and Pulleys***

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



## Conveyor Belts

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

## 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 threephase induction motors
IS 9628: 1980	Three-phase induction motors with type of protection 'n'
IS10242:Part3: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 1000 V - Part I: General and Definitions
IS 9921: Part 2: 1982	Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating
IS 9921: Part III : 1982	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and Construction
IS 9921: Part 4: 1985	Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests
IS 9921: Part 5: 1985	Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders
IS 12776: 2002	Galvanized Strand for Earthing – Specification
IS 14981: 2001	Live Working - Earthing or Earthing and Short-Circuiting Equipment Using Lances as a Short-Circuiting Device-Lance Earthing
IS 13947: Part 2 : 1993	Specification for Low-voltage Switchgear and Control gear - Part 2 : Circuit Breakers
IS 14658: 1999	High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers
IS 8828: 1996	Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations
IS 2309: 1989	Code of Practice for Protection of allied structure against lightning
IS 732:1989	Code of Practice for Electric wiring installation
IS 694: 1990	PVC insulated Cables for working voltages upto and including 1100V
IS 1554 (Part 1):1988	PVC insulated (Heavy Duty) electric cables : Part 1 for working voltages upto and including 1100 V
IS 1554 (Part 2) : 1988	PVC insulated (Heavy Duty) electric cables : Part 2 for working voltages from 3.3 kV upto and including 11 kV
IS 7098 (Part 1) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages upto and including 1100 V





IS 7098 (Part 2) : 1985	Cross linked Polyethelene insulated PVC sheathed cables Part 2 for working voltages from 3.3 kV upto and including 33 kV
IS 7098 (Part 3) : 1988	Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV upto and including 220 kV
IS 10118 (Part 1) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears : Part 1 General
IS 10118 (Part 2) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 2 Selection
IS 10118 (Part 3) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 3 Installation
IS 10118 (Part 4) : 1982	Code of Practice for selection, installation & maintenance of switchgears and Control gears: Part 4 Maintenance

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

#### **E. Operations & Maintenance Standards:**

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

The Concessionaire at it's own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out. The Concessionaire shall abide by the operations and maintenance plan as outlined in the approved DPR.

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

The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the concessionaire premises and /or the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession. While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards or in its absence ISO/OISD Standards. In the event that the concessionaire, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.



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

### E.1 Maintenance Standards

IS ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

### E.2 Painting

IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)
IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147 : 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419 : 1989	Antifouling paint, brushing for ship's bottom and hulls-Specification (second revision)
IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
IS 6948 : 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships
IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

### F. Safety Standards



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

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

[Besides the above, the Concessioning Authority may prescribe standards specific to the port/project]





## APPENDIX 5

### PROJECT SCHEDULE

(Project Specific – key milestones shall be specified by the Concessioning Authority for example milestone dates for completion of Construction Works including installation of equipments etc. These should be easily identifiable and measurable. Following is an indicative table.)

Milestone Date	Activity/Level of completion of Project
180 days from the date of Award of Concession	100% Two Nos. 120 Tonnes capacity Harbour Mobile Cranes as per the specification mentioned in Appendix-4, shall be deployed for Cargo Handling Operations in all respects within six months from the date of award of Concession



## APPENDIX 6

### DESIGNS AND DRAWINGS

(Concessioning Authority to stipulate the Designs and Drawings that the Concessionaire will be expected to submit for review by the Independent Engineer as per the Project Requirements)

1. General Arrangement Drawings of Equipment
2. All Technical Specifications of the Equipments and major components
3. Necessary documents to prove that the harbor mobile crane are brand new one may be submitted
4. List of Experienced Qualified Operators, Technicians and Staff along with their qualifications and bio-data, proposed to be employed by the Concessionaire shall be submitted.
5. Necessary documents to prove that the deployed cranes are complied with Indian Dock Labour Regulations, Contract Labour Act, Motor Vehicle Act, shall be submitted.
6. Copy of valid Insurance policy, covering all risks, for men and machines proposed to be employed in the project.
7. Copies of Technical Literature, operation and maintenance manual of the Harbour mobile cranes proposed to be deployed in the project.
8. . Maintenance plan proposed to be adopted in the Harbour mobile cranes.
9. List of safety features provided in the proposed harbor mobile cranes and their status to be submitted every month.
10. Monthly statements showing the weight of cargo handled, percentage availability and details of break downs etc; duly signed by the Traffic Department



## APPENDIX - 7

### TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

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

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

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

#### 2. Review of Designs and Drawings

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioneing Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of





construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

(v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.

(vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

(vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

(viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.

(ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessions Authority and the Concessionaire forthwith.

(x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessions 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 Concessions Authority.

(xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the



Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority and the Concessionaire of the same.

(xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

### Annexure

#### Tests

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

1.The Harbour mobile cranes and loose gears shall be tested as per Dock workers, safety and Health Regulation Act

2.Tests,If any, required under Pollution control Act and Motor Vehicle Act



## APPENDIX 8

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

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

B. [Such permits and clearances under Environmental Law/other Applicable Laws as will be procured by the Concessioning Authority before the commencement of the Project, to be specified by the Concessioning Authority.]

Following clearances are to be obtained by the Concessionaire

1. Necessary clearance from the Civil Engg Department of the Authority to be obtained before commencement of operation.
2. The Indian Dock Safety Regulations should be complied with.
3. Comply with all applicable Indian Laws including EPF, ESI Acts.





## APPENDIX 9

### PERFORMANCE GUARANTEE

#### (PROFORMA OF BANK GUARANTEE)

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 VOC PORT TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at V.O. Chidambaranar Port Trust, Tuticorin - 628004 (hereinafter referred to as "**the Board**" or "**the Concessioneing Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

#### WHEREAS

- a) The Board, vide its Request for Proposal dated [●] ("**the RFP**") invited duly short listed bidders to implement a project envisaging \_\_\_\_\_ (more particularly described in Appendix 1 and hereinafter referred to as "**the Project**");
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the consortium comprising of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ ("**the Consortium**") OR the Board accepted the bid of \_\_\_\_\_ Ltd. ("**the Applicant**") and issued the Letter of Intent No \_\_\_\_\_ dated \_\_\_\_\_ ("**LOI**") to the Consortium/Applicant requiring, inter alia, the execution of the Concession Agreement, ("**the Concession Agreement**") the draft whereof was provided in the RFP;
- c) Pursuant to the LOI the Applicant/Consortium has promoted and incorporated a special purpose company \_\_\_\_\_ ("**the Concessionaire**"), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge



by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

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

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. \_\_\_\_\_ ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs.2.46 crores (Rupees two crores forty six lakhs only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.

4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect until Scheduled Project Completion Date and for a period of twelve months thereafter unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs.2.46 crores (Rupees two crores fortysix lakhs 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;

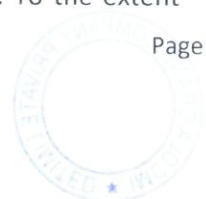
e. shall not be affected by any failure, omission or delay on the Concessioneing Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioneing Authority in this Guarantee;

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 \_\_\_\_\_ 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 the [●] Project on Build, Own and Operate (BOO) basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED

For and on behalf of

the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)



## PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project on Build, Own and Operate (BOO) basis, through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article [●] and Schedule-[●] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioneing Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND  
DELIVERED For and on behalf of  
CONCESSIONAIRE by:

(Signature)

(Name and Designation)

(Address)



SIGNED, SEALED AND DELIVERED  
For and on behalf of INDEPENDENT  
ENGINEER BY

(Signature)

(Name and Designation)

(Address)





## APPENDIX 11

### PERSONNEL AND LABOUR REQUIREMENTS

The concessionaire is expected to employ his own personnel/labour. Employment of existing personnel/ labour is not envisaged.



## APPENDIX 12

### TARIFFS

The Concessionaire may charge fees for the Project Facilities and Services provided in accordance with the Tariff Notification no.TAMP/16/2010-TPT dt.23.7.2010 and TAMP/50/2011/VOCPT dt.19.1.2012 published by TAMP. As a ready reference, the relevant extract of the Tariff Notification is as enclosed:

The aforesaid Tariff caps shall be revised every year based on a variation in the Wholesale Price Index ("WPI"). Such revision shall be based on indexation against 60% (sixty percent) of the variation in the WPI for a relevant year beginning 1<sup>st</sup> January and ending 31<sup>st</sup> December.



## APPENDIX 13

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

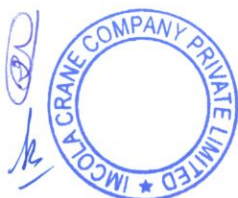
#### **V.O. Chidambaranar Port Trust** **Scale of Rates**

#### CHAPTER – I

##### 1.1. Definitions - General

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

- (i). **“Coastal vessel”** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority.
- (ii). **“Cold move”** shall mean the movement of the vessel without the power of the engine of the vessel.
- (iii). **“Day”** shall mean the period starting from 6 a.m. of a day and ending at 6 a.m. on the following day.
- (iv). **“Foreign-going vessel”** shall mean any vessel other than coastal vessel.
- (v). **“Week”** shall mean a continuous period of 7 days.
- (vi). **“Hirer”** shall mean all users of the port using any of the appliances of the port.
- (vii). **“Month”** shall mean the period from 1<sup>st</sup> to end of the calendar month.
- (viii). **“Port”** means both Zone A and Zone B of the Port of Tuticorin. Zone ‘A’ of the Port shall comprise of all the area other than area in Zone ‘B’. Zone ‘B’ shall comprise the area falling within the limits notified in G.S.R. No.306 (E) in Part II - Section 3 (i) of Gazette of India (Extraordinary), dated 31st March 1979.
- (ix). **“Sailing vessels”** shall mean vessels propelled solely by wind power and includes vessels fitted with mechanical means of propulsion.
- (x). **“Sea going Steam vessels”** shall mean sea-going vessels other than sailing vessels.
- (xi). **“Shift”** shall mean shift of 8 hours as applicable to port employees.
- (xii). **“Shut out cargo”** means, cargo meant for shipment as per the Shipping Documents not taken by Master of a vessel for want of space or draft restriction in part or in full or due to cancellation of the nominated vessel and taken back without being exported. Damaged cargoes and cargo rejected by Surveyors of Shippers, shall not be treated as “Shut out Cargo”.
- (xiii). **“Trip”** shall mean, movements from one point to another in one direction only. In Zone ‘B’, service from shore to anchorage shall be treated as one trip, and from anchorage to shore shall be treated as another trip. Ship to ship service shall also be treated as one trip. In other words, service to and fro i.e. from one point to another and back shall be counted as two trips.





## 1.2. General Terms & Conditions

- (i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for classifying a vessel into 'coastal' or 'foreign-going' category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii).
  - (a). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order.
  - (b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.
  - (c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
  - (d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal cargo discharging operations; immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.
  - (e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.
- (iii).
  - (a). Vessel related charges shall be levied on shipowners / steamer agents. Wherever rates have been denominated in US dollar terms the charges shall be recovered in Indian Rupees after conversion of US currency to its equivalent Indian Rupees at the Market Buying Rate notified by the Reserve Bank of India, State Bank of India or its Associates or any other Public Sector Banks as may be specified from time to time. The date of entry of the vessel into the port limit shall be reckoned with as the day for such conversion.
  - (b). Container related charges denominated in US dollar terms shall be collected in equivalent Indian Rupees based on the Market Buying Rate prevalent on the date of entry of the vessel in case of import containers; and on the date of arrival of the containers into the port in case of export containers.
- (iv). A regular review of exchange rate shall be made once in thirty days from date of arrival of the vessels in cases of vessels staying in the port for more than thirty days. In such cases, the basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.
- (v).
  - (a). For the purpose of calculating the dues, the unit by weight shall be 1 tonne or 1,000 kilograms, the unit by volume measurement shall be 1 cubic metre and the unit by capacity measurement for liquids in bulk shall be 1,000 litres.
  - (b). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions below 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.
- (vi). Interest on delayed payments / refunds:
  - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the VOCPT shall pay penal interest on delayed refunds.
  - (b). The rate of penal interest will be 16.25%.



- (c). The delay in refunds by the Port will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
- (d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the VOCPT. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of Port Trust's properties as stipulated in the Major Port Trust Act 1963 and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (vii). Aggregate of all payable bills (including demurrage) payable on cargo handling charges on one consignment shall be subject to a minimum of ` 50/-.
- (viii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (ix). No refund shall be made unless the amount refundable is ` 50/- or more. Similarly, short collection upto ` 50/- will not be demanded by the Port.
- (x). Every requisition for availing the services of craft/equipment/tools & plant shall be accompanied by the hire charges in advance.
- (xi). The hire of floating craft, equipment and tool and plant to the public is not guaranteed normally by the port. The craft/equipment/tool and plant shall be hired out only if available. The VOCPT shall not be responsible to the hirer or any person for any loss or damage or injury to life or property arising directly or in-directly from the use of craft/equipment/tool and plant of any sort or any damage which may occur as a result of non-supply or delay in supply or by the use of the craft/equipment/tool and plant of the port or due to failure of the craft/equipment/tool and plants at any stage during the period of hire. The hirer shall keep the crafts/equipments in good order and condition and shall be liable for any damage caused to the crafts/equipment/tools and plants during the subsistence of hire and shall make good all damages, whether by accident, by fire or otherwise. The hirer shall indemnify the port and against all loss or damage or injury to life arising directly or indirectly from the use of the craft/equipment/tool and plants during the period of hire to any property belonging to the Board including the crafts/equipment/tools and plants under hire or to any other person or property or break down or any demurrage incurred on cargo. The liability of the hirer shall not be affected by the fact that such loss or damage or injury to life may have arisen due to any act or default of any employee of the port. The hirer shall also indemnify the port for all liabilities under the Workmen's Compensation Act.
- (xii). The cost of repairing the damage sustained by the craft/equipment/tools and plants or appliances or parts thereof that might be broken, missing or specially damaged or lost during the period of hire shall be that actually incurred for the purpose by the VOCPT including the usual indirect charges, centage charges. The cost of replacements, if necessary of a part or in full of the craft/equipment/tools and plants will be either the book value or the current market value whichever is higher.
- (xiii). In case of damages to crafts, equipment, tools and plants, the hirer shall deposit anticipated amount for all such charges for damages as assessed by the VOCPT immediately on receipt of the demand, pending determination of the actual charges and in case of total loss the hirer shall deposit the book value or market value of the crafts or appliances or properties of the VOCPT whichever is higher. If the damage cost is not paid within the time stipulated, the same will be adjusted from any dues payable to the Agencies concerned.





- (xiv). (a). The vessel related charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.
- (b). The cargo / container related charges for all coastal cargo / containers, other than thermal coal, POL including crude oil, iron ore and iron ore pellets, should not exceed 60% of the normal cargo / container related charges.
- (c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship-shore transfer and transfer from / to quay to / from storage yard including wharfage.
- (d). In case of container related charges, the concession will be applicable on all the relevant charges for ship-shore transfer, and transfer from / to quay to / from storage yard as well as wharfage on cargo and containers.
- (e). Cargo/ container from a foreign port which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be levied the concession charges relevant for its coastal voyage. In other words, cargo/ containers from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.
- (f). The charges for coastal cargo/ containers/ vessels shall be denominated and collected in Indian Rupee.
- (xv). (a). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The Port Trust may, if it so desires, charge lower rates and/or allow higher rebates and discounts.
- (b). The port may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the users in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.
- (c). The ports should, however, notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (xvi). The users shall not be required to pay charges for delays beyond a reasonable level attributable to the VOCPT.

## CHAPTER – II

### VESSEL RELATED CHARGES

#### 2.1. SCHEDULE OF PORT DUES:

Sl.	Particulars	Rate per GRT	Frequency of payment in respect of the same vessel
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No.		Coastal vessel (in `)	Foreign - going vessel (in US\$)	Coastal vessel	Foreign - going vessel
1.	Ships/steamers	5.25	0.2014	Port dues payable once in 30 days.	The due is payable on each entry into the port
2.	Sailing vessel	2.63	0.1007		

**Notes:**

- (1). Port Dues shall be collected based on the GRT of the vessel. Deck Cargo shall be exempted from assessment of Port Dues.
- (2). For oil tankers with segregated ballast, the reduced gross tonnage that is indicated in the "Remarks" column of its International Tonnage Certificate will be taken to be its gross tonnage for the purpose of levying Port Dues.
- (3). No Port Dues shall be levied in respect of the following:
  - (i). Vessels belonging to other Indian Ports; or
  - (ii). any pleasure yachts; or
  - (iii). any vessel which having left this port is compelled to re-enter it by stress of weather or in consequence of having sustained any damage.
- (4). A vessel entering the port but not discharging or taking in any cargo or passengers therein (with the exception of such unshipment/reshipment as may be necessary for purposes of repair) shall be charged with only 50% of the Port Dues with which she would otherwise be chargeable.
- (5). A vessel entering the port in ballast and not carrying passengers shall be charged with only 75% of the Port Dues with which she would otherwise be chargeable.
- (6). A LASH vessel making a 'second call' to pick up empty and / or laden fleeting LASH barges shall be treated as vessel entering a Port, but not discharging or taking any cargo or passenger therein, and shall not be charged any Port Dues.
- (7). The non-commercial vessels, fishing vessels and craft shall be exempted from the payment of Port Dues.
- (8). A coastal vessel, which after paying 50% of the Port Dues as per provisions prescribed at 4 above, re-enters the port within the period of exemption with cargo or passengers or in ballast shall be charged the difference viz., 50% of the Port Dues previously conceded.



- (9). A coastal vessel, which, after paying 75% of Port Dues as per provisions prescribed at 5 above, re-enters the port within the period of exemption with cargo or passengers or in ballast shall be charged the difference, viz., 25% of the Port Dues previously conceded.

### 2.2.1. SCHEDULE OF PILOTAGE FEES

The rate specified below is for Zone A

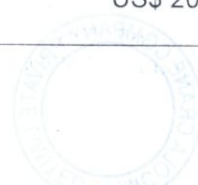
Sl. No.	Size of vessel	Rate per GRT	
		Coastal vessel (in `)	Foreign-going vessel (in US \$)
1.	Upto 10,000 GRT.	7.11	0.2728
2.	10,001 - 15,000 GRT.	7.36	0.2822
3.	15,001 - 20,000 GRT.	7.62	0.2924
4.	20,001 - 25,000 GRT.	7.89	0.3027
5.	25,001 - 30,000 GRT.	8.16	0.3129
6.	Above 30,001	8.43	0.3232
The Pilotage fee prescribed above is subject to a minimum charge of ` 13,737.00 per ship in case of coastal vessel and US\$ 526.80 per ship in case of foreign-going vessel.			

#### Notes:

- Pilotage fee shall include services of the Port's pilot (s) for pilotage of vessels; and, provision of required number of tug/tugs, launch/s of adequate capacity for inward and outward movement and shifting of vessel for port convenience.
- Pilotage Fees shall be collected based on the GRT of the vessel. Deck Cargo shall be exempted from assessment of Pilotage Fees.

### 2.2.2. MISCELLANEOUS PILOTAGE FEES

Sl. No.	Particulars	Rates	
		Coastal vessel (in `)	Foreign-going vessel (in US \$)
1.	Fishing Trawlers (Minimum charges per trawler)	2375.05	91.0813
2.	Mooring a vessel outside the harbour when it does not enter or leave it.	25% of the rate prescribed in schedule 2.2.1 subject to a minimum of 5427.60	25% of the rate prescribed in schedule 2.2.1 subject to a minimum of US\$ 208.145



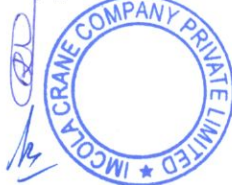
3.	Shifting and re-mooring or for turning a vessel around in her berth for special services viz., bunkering, supply of fresh water, repair, etc.,	20% of the rate prescribed in schedule 2.2.1 subject to a minimum of `4042.35	20% of the rate prescribed in schedule 2.2.1 subject to a minimum of US\$ 155.021
4.	Pilots whose services have been requisitioned but not utilised after the pilot has boarded a vessel.	25% of normal Pilotage charges subject to a minimum of `3,434 minimum of `3,434	25% of normal Pilotage charges subject to a minimum of US \$131.70
5.	Detention Charges beyond 30 minutes after the pilot boards the vessel and is kept waiting on board the vessel.  (i). For first hour or part of an hour  (ii). For every subsequent hour or part thereof	          1442.55          492.25	          55.3214          18.8775
6.	Compensation fees for on carriage of Pilot.	169.85	6.5132

**Notes:**

- (1). The charges prescribed at serial number (4) in the schedule shall be levied not only in cases of cancellation of requisitions for inward and outward pilotage of vessels; but, also for the cancellation of requisitions for shifting of berth of vessel and remooring or for turning a vessel around in her berth or for remooring a vessel in the same berth due to position of heavy lifts or for any other reasons.
- (2). The charges prescribed at serial number (4) shall, however, not be levied in the following cases:
  - (i). Cancellations received at least one hour before the Pilot's appointed boarding time of the vessel.
  - (ii). Cancellation caused for reasons attributable to the port.
- (3). In the event of a vessel carrying a pilot outside the port limits for unavoidable reasons the master shall be bound to leave the pilot at the next nearest port and the master, owner or his representative shall be responsible for the repatriation and all connected formalities thereof and shall also be liable to pay all expenses incurred in the matter of boarding, lodging, other reasonable expenses and the repatriation of the pilot thus over carried. In addition, compensation at the rates prescribed at serial number (6) in the schedule shall be payable by the master of the vessel till the pilot reports back to duty at the port.

**2.2.3. Shifting Charges**

- (I) Shifting between berths in South Break Water / North Break Water





Sl. No.	Size of vessel	Rate per GRT	
		Coastal vessel (in `)	Foreign-going vessel (in US \$)
1.	Upto 10,000 GRT.	1.98	0.0758
2.	10,001 - 15,000 GRT.	2.05	0.0784
3.	15,001 - 20,000 GRT.	2.12	0.0812
4.	20,001 - 25,000 GRT.	2.19	0.0841
5.	25,001 - 30,000 GRT.	2.27	0.0869
6.	Above 30,001	2.34	0.0898

(II) Shifting between berths from South Break Water to North Break Water or Vice versa.

Sl. No.	Size of vessel	Rate per GRT	
		Coastal vessel (in `)	Foreign-going vessel (in US \$)
1.	Upto 10,000 GRT.	3.95	0.1516
2.	10,001 - 15,000 GRT.	4.09	0.1568
3.	15,001 - 20,000 GRT.	4.24	0.1625
4.	20,001 - 25,000 GRT.	4.38	0.1682
5.	25,001 - 30,000 GRT.	4.53	0.1739
6.	Above 30,001	4.68	0.1796

General notes relating to Schedule 2.2.1., 2.2.2. and 2.2.3.

- (1). (i). For piloting a vessel on cold move, 100% of the applicable pilotage fee will be levied if both inward and outward movements are cold move in addition to the normal pilotage fee. In case only one



movement is cold, then 50% of the applicable pilotage fee will be levied in addition to the normal pilotage fee.

- (ii). For shifting a vessel on cold move, 100% of the applicable shifting charge shall be leviable in addition to the normal shifting charge.

- (2). Shifting a vessel from any berth to outer anchorage shall mean completion of pilotage act; on re-entry by the vessel under the same port entry, pilotage fees afresh shall be payable as prescribed under the Schedule.

- (3). No charges shall be levied for shifting of a vessel for port convenience.

- (i). "Port convenience" is defined to mean the following:

- (a). If a working cargo vessel at berth or any vessel at mooring is shifted/ in berthed for undertaking dredging work/ hydrographic survey work or for allotting a berth for the dredger or for attending to repairs to berths, maintenance and such other similar works whereby shifting is necessitated, such shifting shall be considered as "SHIFTING FOR PORT CONVENIENCE". The shifting made to reposition such shifted vessel shall also be considered as "SHIFTING FOR PORT CONVENIENCE".

- (b). If a working cargo vessel is shifted from berth to accommodate on ousting priority vessels which are exempted from bearing shifting charges, such shifting shall be treated PORT CONVENIENCE.

- (c). Whenever a vessel is shifted to accommodate another vessel which can not be berthed at other berths due to draft and LOA restrictions such shifting shall be considered as "SHIFTING FOR PORT CONVENIENCE".

- (d). Whenever a vessel is shifted to accommodate another vessel having priority at the adjacent berth and unless that vessel shifts, another vessel can not be berthed at the adjacent-berth due to length restrictions, such shifting shall also be considered as "SHIFTING FOR PORT CONVENIENCE".

- (e). Whenever a vessel is shifted from berths to accommodate another vessel carrying hazardous cargo which needs adjacent-berth to be kept vacant for safety reasons such shifting shall also be considered as "SHIFTING FOR PORT CONVENIENCE".

- (f). Shifting a vessel from deeper draft berth to lower draft berth in VOC wharf to accommodate the first waiting vessel requiring deeper draft berth provided no other vessel requiring lower draft berth waits, in the queue shall also be considered as "SHIFTING FOR PORT CONVENIENCE"

- (ii). Whenever a vessel is shifted from berth to accommodate another vessel on ousting priority, the vessel shifted is exempted from the payment of shifting charges since the same is paid by the vessel enjoying the ousting priority or the shifting is treated as for PORT CONVENIENCE when the priority



vessel is exempted from payment of such charges. This benefit will, however, not be applicable in the following cases:

- (a). Non-cargo vessel which in any case have to vacate the berth when cargo vessels arrive.
  - (b). Vessels using the berth exclusively for overside loading/discharge.
  - (c). Vessels which are idling at berth without doing any cargo handling operations.
- (4). In respect of "priority berthing / ousting priority" to any vessel, the charges for "shifting in" and "shifting out" shall be levied at the rate applicable to one pilotage act.
- (5). Shifting from deeper draft berth to lower draft berth and vice versa in respect of any vessel shall be carried out only on priority / ousting priority request from the steamer agent / the master of the next vessel in the queue for berthing. The charges payable shall be equivalent to one pilotage act as prescribed in the schedule. When the working vessel is to complete loading/ unloading and is ready for sailing out within 24 hours from the time the request for ousting priority from the vessel is received, the former vessel will not be shifted unless vacant berths are available for completing the handling of the former vessel.
- (6). Ousting priority shall mean ousting a working vessel in a berth or jetty and berthing another vessel asking for such ousting permission in view of the following:
- (i). Warranted by the hazardous nature of the cargo and dock safety requirements.
  - (ii). The time schedule in the voyage is to be kept up by vessel carrying foodgrains for public consumption and fuel, oil and coal meant for consumption by public utility services, viz., thermal power plants, Government companies dealing in manufacturing, refining and or distribution of such products.
  - (iii). As directed by the Government from time to time in this regard.
- (7). In cases of ousting priority, over and above the pilotage fees leviable on the vessel availing the benefit of such ousting, additional pilotage fees equivalent to the pilotage fees for the vessel so ousted shall be leviable from the former.
- (8). Full pilotage charges will be levied when ousted vessel is shifted to anchorage. If ousted vessel is shifted to other berths, shifting charges as applicable for the ousted vessels shall be levied as per Scale of Rates. The



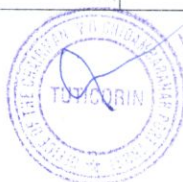


vessel availing the benefit of ousting priority shall be liable to pay the additional pilotage / shifting fee prescribed in this note.

- (9). The decision to shift a vessel to outer anchorage or any other berth on account of its non-performance shall be taken by the Chairman (VOCPT). The following charges shall be levied for shifting of a vessel to outer anchorage /any other berth on account of its non performance:
- (i). In case a vessel is shifted to outer anchorage pilotage fee as prescribed in Schedule 2.2.1 shall be levied on re-entry of the vessel under the same port entry.
  - (ii). In case a vessel is shifted to berths I to VI or between Coal Jetty I and II and Oil Jetty, 25% of the pilotage fees prescribed in Schedule 2.2.1 shall be levied.
  - (iii). If a vessel shifted from Coal jetties and Oil Jetty to berth nos. I to VI and vice versa, 50% of the pilotage fee prescribed in Schedule 2.2.1 shall be levied.
- (10). Only in cases of any extra-ordinary circumstances and in cases which are not specifically provided in the Scale of Rates, Chairman, Port Trust may decide whether the movement of a vessel is for port / Agent's convenience.

### 2.3. SCHEDULE OF TUG HIRE FEES

Sl. No.	Particulars	Unit	Rates	
			Coastal vessel (in `)	Foreign-going vessel (in US \$)
1.	Harbour tugs of more than 10 Ton Bollard Pull engaged for towing barges, lighters, etc., and for services other than berthing, unberthing, shifting, mooring and remooring.			
	(i). Within inner Harbour.	Per tug per hour or part thereof	2849.45	109.2747
	(ii). When engaged within port limits.	-do-	5698.90	218.5504
	(iii). When engaged for salvage work within the port limits.	-do-	8904.70	341.4899
	(iv). When engaged for salvage work outside the port limits.	-do-	11,397.55	437.0893



2.	Hire charges for Tugs, Launches and other Harbour Craft			
	(i). Pilot Launches	For hour or part thereof	1141.20	43.7646
	(ii). Mooring Launches	-do-	713.25	27.3524
	(iii). Tugs below 10 Tonnes Bollard Pull	-do-	855.90	32.8225
	(iv). Dumb Barge.	-do-	218.50	364.20
	(v). Mooring Boats.	-do-	252.70	421.20
	(vi). Tugs of 10 Tonnes Bollard pull	-do-	2609.00	100.0540
3.	Additional tug charge for towage of each lighter or sailing vessel in any one direction	Per tug per hour or part thereof	228.30	8.7552
4.	Tug hire charges when requisitioned but not utilised or delayed (applicable for all tugs irrespective of their capacity).			
	(i). Non-utilisation of the tug by the hirer for any reason, other than those exceptional circumstances under which the hirer has no control and is not at fault and the tug released within one hour from the time of reporting for assigned work.	Per tug	1424.70	54.6374
	(ii). In the case of the tug being delayed by the hirer beyond one hour from the time the tug has reported for work due to reasons other than exceptional circumstances under which the hirer has no control and is not at fault.			
	(a). For first one hour.	Per tug	2849.45	109.2747
	(b). For every additional half an hour or part thereof.	Per tug	1159.00	44.4477
5.	Cancellation charges in respect of floating craft mentioned in Sl. No. 2 above, whose services have been requisitioned but not utilised or delayed.  If cancellation was done without giving 3 hours Notice.			
	(i). Launch (Flat Rate).			
	(ii). In respect of Tug.(Flat Rate).	Per tug	228.30	8.7552
		Per tug	456.60	17.5104



**Notes:**

- (1). Tug service shall be provided as part of the pilotage service (without any charge) on requisition from Master/Owners, Agents of vessels for purposes of berthing, un-berthing, shifting, mooring, re-mooring and all connected works. Tug service provided as part of shifting service shall also be without any charge.
- (2). The tug hire charges in respect of items (iii) and (iv) in serial number (1) includes the cost of ration to the crew, the services of the crew and the victualling of the officers deputed for salvage or other operations; but, excludes the cost of insurance plus incidental charges at 20 percent of the insurance premium which will also be recovered in addition to the rates prescribed.
- (3). (i). If cancellation in respect of floating craft specified in serial number 2 is done without giving two hours notice, hire charges for one hour at the rates applicable to the particular craft shall be levied.  
(ii). In the case of delay on the part of the port user in utilising the craft specified in serial number 2 from the time of requisition, the actual hire charges as prescribed for the particular craft shall be levied from the time indicated in the requisition.
- (4). Additional fees of 50 percent of the charges otherwise leviable shall be recovered for work performed on Sundays and port non-operating days or between the hours of 6.00 p. m. and 6.00 a. m. In the case of Zone 'B' no charges shall be levied for the work performed between the hours of 6.00 p.m. and 6.00 a.m. on port working days.
- (5). The VOCPT may, at its discretion, hire out the floating craft outside the port limits at the rates prescribed above.

**2.4. BERTH HIRE FEES****2.4.1. SCHEDULE OF BERTH HIRE CHARGES**

Sl. No.	Particulars	Rate per GRT per hour or part thereof	
		Coastal vessel (in ` )	Foreign- going vessels (in US \$)
1.	Upto and inclusive of 3,000 GRT	0.075 subject to a minimum of ` 148.60	0.0029 subject to a minimum of US \$ 5.6981
2.	3,001 to 10,000 GRT	0.050 subject to a minimum of ` 226.85	0.0019 subject to a minimum of US \$ 8.70

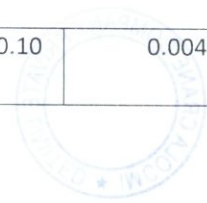




3.	10,001 to 15,000 GRT	0.065	0.0025
4.	15,001 to 20,000 GRT	0.080	0.0031
5.	20,001 to 25,000 GRT	0.110	0.0042
6.	25,001 to 30,000 GRT	0.120	0.0046
7.	30,001 GRT and above	0.130	0.0050

#### 2.4.2. SCHEDULE OF BERTH HIRE CHARGES FOR OTHER VESSELS

Sl. No.	Particulars	Unit	Rate per hour or part thereof	
			Coastal vessel (in `)	Foreign-going vessels (in US \$)
1.	Non-commercial vessels like tugs and barges	Per vessel per hour or part thereof	15.10	` 25.18
2.	Craft registered under the Harbour Craft Rules of V.O. Chidambaranar Port Trust.	-do-	0.70	` 1.19
3.	Other Crafts	-do-	1.00	` 1.66
4.	Additional Berth Hire Charges after expiry of time given by the Deputy Port Conservator, to vacate the berth. (notice given atleast 12 hours in advance)			
	(i). For the first 12 hours	Per hour or part thereof	1187.10	45.524
	(ii). For the next 12 hours	-do-	2375.30	91.092
	(iii). Thereafter	-do-	3562.40	136.616
5.	(i). Charges for the Lash vessels during the process of operations of loading or unloading of cargo.	Per hour or part thereof	15.05	0.5774
	(ii). For barges waiting at safe fleeting area	-do-	5.00	0.1915
6.	Berthing fees on sailing vessels and sea-going steam vessels coming alongside the wharves at Zone 'B' of the V.O. Chidambaranar Port.			
	(i). Sailing vessels other than lighters.	Per GRT per hour or part	0.10	0.0040



		thereof		
	(ii). Sea going steam vessels.	Per vessel / per hour or part thereof	10.65	0.4073
7.	Fishing Vessels (Trawlers / Boats)			
	(i). at finger jetty.	Per vessel / per hour or part thereof	12.40	0.4760
	(ii). at VOC wharf and additional berth.	- do -	19.50	0.7465
8.	Double banking	In respect of a vessel which is double banked with another vessel occupying a berth it will be charged half of the Berth hire charges specified at schedule 2.4.1 and 2.4.2		

**Note on Sl. No. 7:**

Any vessel which continues to occupy any berth after the expiry of the time given by the Deputy Conservator/Traffic Manager to vacate the berth (notice of which had been given at least (12 hours in advance) shall pay additional berth hire charges at the following rates: -

- (i). For the first two days – At four times the rate of berth hire charges for authorised occupation.
- (ii). For third day and for subsequent days - At six times the rate of berth hire charges for authorised occupation.
- (iii). The additional berth hire charges shall be in addition to normal berth hire charges payable under the schedule.

**Notes:**

- (1). The period of hour shall be calculated from the time the vessel occupies berth.
- (2). Berth hire shall stop 4 hours after the time of the vessel signaling its readiness to sail. The time limit prescribed for cessation of berth hire shall exclude the ship's waiting time for want of favourable tidal conditions. There shall be a penal berth hire equal to berth hire charges of one day berth hire charge for a false signal.



- (3). Vessel berthed at additional berths, finger jetty and shallow water berth and any other berth where wharf crane facility is not made available by the VOCPT, a rebate of 20% of the applicable berth hire charges will be allowed.
- (4). All Tankers carrying oil, petroleum products, chemicals in bulk, lube base stock in bulk shall be charged berth hire charges at 125% of the charges applicable to relative classification.
- (5). Ousting Priority/Priority Berth Hire Charges:
  - (i). For providing the priority berthing to any vessel, a fee equivalent to berth hire charges for 24 hours or 75 % of the berth hire charges calculated for the total period of actual stay at the berth, whichever is higher shall be levied.
  - (ii). For providing the ousting priority to any vessel, a fee equivalent to berth hire charges for 24 hours or 100% of the berth hire charges calculated for the total period of actual stay at the berth whichever is higher, shall be levied.
- (6). When a vessel is shifted from V.O.C wharf to additional berth during the duration of every one hour of stay, berth hire charges as applicable to V.O.C wharf shall continue to be applied till the expiry of that hour. Thereafter, the rates as applicable to additional berths shall be levied. The same principle shall be applied when a vessel is shifted from additional berth to VOC wharf.
- (7). Charges on lash vessels/ barges.
  - (i). If the mother vessel is berthed alongside a wharf, all the charges as applicable to other vessels shall be recoverable.
  - (ii). If the mother vessel is anchored at outer anchorage within the port limits, Port dues alone shall be levied.
  - (iii). If anchored at inner anchorage, all applicable vessel-related charges excluding berth hire shall be recovered.
  - (iv). The charges for towing of barges will be recovered as per the rates prescribed for the craft used.
- (8). One day Berth Hire Charges is chargeable as the minimum charges for cancellation of services requisitioned. This will include amendment to Berthing Schedule, cancellation of Berthing, amendment to Computer entry in the system for E-booking etc.
- (9). No berth hire shall be levied for the period when the vessels idle at its berths due to break down of port equipment or power failure or any other reasons attributable to the port.
- (10). If a vessel idles at berth without deployment of labour gang after lapse of four hours of berthing, Penal berth hire charges as prescribed in SI.No.4 of the above schedule of Berth Hire charges will be levied. Penal berth hire will not apply if such idling is on account of inability of the port to provide the labour gang requisitioned.

## 2.5. SPECIAL RATE FOR CAPITAL DREDGING





Sl. No.	Particulars	Special rate for dredging
1.	On vessels using Berth VOC III, VOC IV, Coal Jetty I, Coal Jetty II, Oil Jetty, Berth No.VIII and Berth No.IX	30% of the applicable Port Dues, Pilotage and Berth hire charges.
2.	On vessels using Container Berth (Berth No.7)	(i). 15% of the applicable Port Dues (ii). 15% of the applicable Pilotage. (iii). 30% of the applicable Berth hire charges.

**Note:**

- (1). The special rate for capital dredging will automatically cease to be levied from 1 April 2013.

**2.6. CHARGES FOR SUPPLY OF WATER TO SHIPPING**

Sl. No.	Particulars	Unit	Rate	
			Coastal vessels (in `)	Foreign - going vessels (in US\$)
1.	Water supplied to ships at the Wharf.	Per 1000 Liters or part thereof	78.90 subject to a minimum of ` 1607.70	3.0267 subject to a minimum of US\$ 61.655
2.	Water supplied by water barge.	- do -	157.85	6.0534
3.	Charges for the use of water barge.	Per Trip	11005.55	422.0565
4.	Cancellation charges when a water barge is ordered but, not cancelled in writing within 6 hours prior to the time of commencement of services.	Per barge	730.80	28.025
5.	Detention charge for the water barge detained beyond the period of one day i.e. 24 hours.	Per 8 hours and part thereof	2477.20	95.00

**Notes:**

- (1). Charges for supply of water by water barge is inclusive of all incidental charges, which the port may have to incur on this account.
- (2). The charges for water supply by water barge will be on the full capacity of the barge irrespective of the quantity of water actually supplied.



- (3). In addition to the charges specified for serial number (3) above, Tug Hire and other incidental charges shall be levied as per the rates specified for the same in the Scale of Rates.

## 2.7. ANCHORAGE FEES

The following charges shall be levied as anchorage fee for stay of vessel (ship or steamer, sailing vessel, tugs, launches or other marine crafts) in the port waters within the notified port limits:

### 2.7.1. Schedule of Anchorage charges

Sl. No.	Particulars	Rate per GRT per hour or part thereof			
		For stay of vessel in any area inside the harbour basin but without occupying any of the berths/jetties either individually or by means of double banking		For stay of vessel in any area outside the harbour basin and within the notified Port Limits of V.O. Chidambaranar Port Trust.	
		Coastal vessels (in `)	Foreign - going vessels (in US\$)	Coastal vessels (in `)	Foreign - going vessels (in US\$)
1.	Upto and inclusive of 3,000 GRT	0.0151 subject to a minimum of ` 29.75	0.00058 subject to a minimum of US \$1.14	0.0060 subject to a minimum of ` 12.00	0.00023 subject to a minimum of US \$0.46
2.	3,001 to 10,000 GRT	0.0099 subject to a minimum of ` 45.37	0.00038 subject to a minimum of US \$1.74	0.0040 subject to a minimum of ` 18.25	0.00015 subject to a minimum of US \$ 0.70
3.	10,001 to 15,000 GRT	0.0130	0.00050	0.0052	0.00020
4.	15,001 to 20,000 GRT	0.0161	0.00062	0.0065	0.00025
5.	20,001 to 25,000 GRT	0.0219	0.00084	0.0086	0.00033
6.	25,001 to 30,000 GRT	0.0240	0.00092	0.0096	0.00037



7.	30,001 GRT and above	0.0260	0.00100	0.0104	0.00040
8.	Double Banking	In respect of a vessel which is double banked with another vessel occupying a berth it will be charged half of the anchorage charges specified in the above schedule.			

## 2.7.2. Schedule of Anchorage charges for other vessels

Sl. No.	Particulars	Unit	Rate per hour or part thereof			
			For stay of vessel in any area inside the harbour basin but without occupying any of the berths/jetties either individually or by means of double banking		For stay of vessel in any area outside the harbour basin and within the notified Port Limits of V.O. Chidambaranar Port Trust.	
			Coastal vessels (in `)	Foreign - going vessels (in US\$)	Coastal vessels (in `)	Foreign - going vessels (in US\$)
1.	Non-Commercial vessels like tugs and barges	Per Vessel per hour or part thereof	3.78	` 6.30	1.50	` 2.50
2.	Craft registered under the Harbour Craft Rules of V.O. Chidambaranar Port Trust	-do-	0.18	Re. 0.30	0.07	Re. 0.12
3.	Other Crafts	-do-	0.25	Re. 0.4	0.10	Re. 0.17
4.	(i). Charges for the Lash vessels during the process of operations of loading or unloading of cargo.	Per hour or part thereof	3.75	0.1443	1.50	0.0577
	(ii). For barges waiting at safe fleeting area	-do-	1.25	0.0479	0.50	0.0192
5.	Berthing fees on sailing vessels and sea-going steam vessels coming alongside the wharves at Zone 'B' of the V.O. Chidambaranar Port.					
	(i). Sailing vessels other than lighters.	Per GRT per trip.	0.20	0.0080	0.08	0.0032





	(ii). Sea going steam vessels.	Per vessel / per hour or part thereof	2.65	0.1018	1.05	0.0407
6.	Fishing Vessels (Trawlers / Boats)					
	(i). at finger jetty.	Per vessel / per hour or part thereof	3.10	0.1190	1.25	0.0476
	(ii). at VOC wharf and additional berth.	-do-	4.85	0.1866	1.95	0.0746
7.	Double banking	In respect of a vessel which is double banked with another vessel occupying a berth, it will be charged half of the anchorage charge specified in the above schedule				

**Note:**

- (1). Anchorage fees will be for stay of vessels for more than 12 hours

**2.8. Schedule of Lighterage Operation fee in respect of vessels at anchorage:**

Sl. No.	Particulars	Rate per GRT per hour or part thereof	
		Coastal vessels (in `)	Foreign - going vessels (in US\$)
1.	Upto and inclusive of 3,000 GRT	0.0151 subject to a minimum of ` 29.75	0.00058 subject to a minimum of US \$1.14
2.	3,001 to 10,000 GRT	0.0099 subject to a minimum of ` 45.37	0.00038 subject to a minimum of US \$1.74
3.	10,001 to 15,000 GRT	0.0130	0.00050
4.	15,001 to 20,000 GRT	0.0161	0.00062

5.	20,001 to 25,000 GRT	0.0219	0.00084
6.	25,001 to 30,000 GRT	0.0240	0.00092
7.	30,001 GRT and above	0.0260	0.00100
8.	Double Banking	In respect of a vessel which is double banked with another vessel occupying a berth it will be charged half of the above charges specified in the above schedule.	

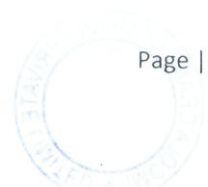
**Notes:**

- (1). The facility is available to deep draught vessels carrying coal, food grains and pulses arriving with a draught of more than 10.7 metres which after lightening to a draught of 10.7 or 9.3 metres, as the case may be, will be handled at the berth.
- (2). The facility is subject to the Steamer Agent obtaining Environmental Clearance and furnishing Mercantile Marine Department's certificate regarding safety of vessels used for lighterage and carrying passengers.
- (3). The barges carrying lightered cargo will be permitted to be berthed at Zone'A' only subject to availability of berth.
- (4). The lightered cargo can be handled in Zone'B' also subject to payment of vessel related charges and wharfage charges as per Port SOR in respect of vessel/barges carrying such lightered cargo to Zone-B.
- (5). For Pulses and Food grains if the berth No.8 is occupied and Port could not allot berth to the vessel, anchorage operations would be allowed till the vessel reaches 9.3 m draught or till such time that berth No.8 is available whichever is earlier.
- (6). The Barges used for lightering the cargo if berthed in 'Easter Arm' and lash Jetty for handling of lightered cargo, the berth hire will be at 80% of the Normal rate.

### CHAPTER – III

#### CARGO RELATED CHARGES

##### 3.1. SCHEDULE OF WHARFAGE DUES



Sl. No.	Particulars	Unit of Charge	RATES (in Rupees)***			
			Zone A		Zone B	
			Foreign	Coastal	Foreign	Coastal
1.	ANIMALS AND ANIMAL PRODUCTS	Each	57.00	34.20	28.00	16.80
2.	<b>CASHEW, FRUITS, NUTS, TAMARIND SEED</b>					
	(a). Cashew nuts.	1 M.T.	30.00	18.00	24.00	14.40
	(b). Cashew Kernels.	1 M.T.	41.00	24.60	34.00	20.40
	(c). Tamarind seed.	1 M.T.	28.00	16.80	14.00	8.40
3.	<b>COAL &amp; COKE</b>					
	(a). Charcoal in bags/bulk.	1 M.T.	28.00	16.80	12.00	7.20
	(b). Steaming (Non-coking Coal)	1 M.T.	27.00	16.20	16.20	9.70
	(c). Coal other than Steaming (Non-coking Coal) and coke in bulk	1 M.T.	30.00	18.00	18.00	10.80
	(d). Coal and Coke handled through Coal Jetty (other than thermal coal).	1 M.T.	38.00	22.80	--	--
	(e). Thermal Coal	1 M.T.	38.00	38.00	--	--
4.	<b>COIR/YARN MATS</b>	1 M.T.	42.00	25.20	21.00	12.60
5.	<b>CONSTRUCTION MATERIALS</b>					
	(a). River sand, stone dust, bricks, tiles etc.,	1 M.T.	18.00	10.80	12.00	7.20
	(b). Granite and Coral Stones.	1 M.T.	50.00	30.00	27.00	16.20
	(c). Cement.	1 M.T.	35.00	21.00	18.00	10.80
	(d). Clinker.	1 M.T.	28.00	16.80	14.00	8.40
	(e). Fly ash	1 M.T.	18.00	10.80	12.00	7.20
6.	<b>CONTAINERS</b>					
	(a). Containers of 20 feet (Empty)	Each.	85.00	51.00	--	--
	(b). Cargo in Full Container Load 20 feet.	Each.	425.00	255.00	--	--



Sl. No.	Particulars	Unit of Charge	RATES (in Rupees)***			
			Zone A		Zone B	
			Foreign	Coastal	Foreign	Coastal
	(c). Containers above 20 feet (Empty)	Each.	128.00	76.80	--	--
	(d). Cargo in Full Container Load above 20 feet.	Each.	638.00	382.80	--	--
7.	<b>COTTON-RAW</b>	1 Cum.	35.00	21.00	18.00	10.80
8.	<b>FERTILIZERS</b>					
	(a). Sulphur and Rock Phosphate	1 M.T.	33.00	19.80	15.00	9.00
	(b). MOP, Urea, DAP, SOP and other finished fertilizers.	1 M.T.	41.00	24.60	19.00	11.40
9.	<b>FOOD GRAINS and FOOD PRODUCTS</b>					
	(a). Rice, Wheat and other foodgrains (raw broken or otherwise)	1 M.T.	42.00	25.20	19.00	11.40
	(b). Salt in bags/bulk.	1 M.T.	5.00	3.00	4.00	2.40
	(c). Sugar, candy or cube bags/bulk.	1 M.T.	42.00	25.20	32.00	19.20
	(d). Cattle Feed/Animal Feed.	1 M.T.	12.00	7.20	6.00	3.60
	(e). Maize.	1 M.T.	20.00	12.00	12.00	7.20
	(f). Copra cake.	1 M.T.	28.00	16.80	12.00	7.20
10.	<b>IRON and STEEL MATERIAL and iron scrap</b>	1 M.T.	35.00	21.00	18.00	10.80
11.	<b>LIQUID CARGO</b>					
	(a). Phosphoric acid, Vinyl Chloride and Liquid Ammonia in bulk.	1 M.T.	85.00	51.00	--	--
	(b). Ethylene-di-Chloride.	1 M.T.	51.00	30.60	--	--
	(c). Sulphuric Acid	1 M.T.	50.00	30.00	--	--
	(d). Molasses.	1 M.T.	41.00	24.60	--	--
	(e). Caustic soda lye.	1 K.L.	39.00	23.40	--	--
	(f). Liquefied Petroleum Gas.	1 Cum.	118.00	70.80	--	--



Sl. No.	Particulars	Unit of Charge	RATES (in Rupees)***			
			Zone A		Zone B	
			Foreign	Coastal	Foreign	Coastal
	(g). Other Liquid Cargo not specified.	1 Cum.	90.00	54.00	--	--
	(h). Sludge oil	1 M.T.	47.10	28.26	23.55	14.13
12.	MILITARY GOODS.	1 M.T.	57.00	34.20	--	--
13.	<b>OIL</b>					
	(a). Oil Naphtha.	1 K.L.	70.00	70.00	--	--
	(b). Oil Furnace.	1 K.L.	65.00	65.00	--	--
	(c). Super Kerosene, Diesel, Petrol.	1 K.L.	46.00	46.00	--	--
	(d). Oils-Animals or vegetables.	1 Cum.	46.00	27.60	12.00	7.20
	(e). Oils-Minerals other than specified	1 K.L.	46.00	27.60	12.00	7.20
14.	<b>ORES</b>					
	(a). Ores and Minerals.					
	(i). For iron ore and iron pellets	1 M.T.	19.00	19.00	12.00	12.00
	(ii). Others	1 M.T.	19.00	11.40	12.00	7.20
	(b). Bauxite in bulk or bags.	1 M.T.	28.00	16.80	12.00	7.20
	(c). Gypsum.	1 M.T.	7.00	4.20	4.00	2.40
	(d). Feldspar, Ilmenite Sand/routile, Garnet	1 M.T.	19.00	11.40	12.00	7.20
	b. Copper Concentrate.	1 M.T.	55.00	33.00	--	--
	(f). Copper Anode	1 M.T.	55.00	33.00	--	--
	(g). Copper Slag.	1 M.T.	30.00	18.00	--	--
15.	TIMBER AND ALLIED PRODUCTS	1 Cum.	31.00	18.60	18.00	10.80
16.	Goods not otherwise specified - Imported / Exported in Bulk.	1 M.T.	42.00	25.20	12.00	7.20
17.	Wharf Dues in respect of Foodgrains manifested for Indian Ports and	1 M.T.	1.50	0.90	--	--

Sl. No.	Particulars	Unit of Charge	RATES (in Rupees)***			
			Zone A		Zone B	
			Foreign	Coastal	Foreign	Coastal
	transhipped into a smaller vessel from tanker or bulk carrier at the Port.					
18.	Aluminum Products, Alcoholic Products, Fish, Fish Products, Dry fish and Meat Products, C.P. Goods, Cotton yarn and Products, Cycle parts and carpets, Tinned Food & PVC Products.	Advalorem	0.20%	0.12%	0.10%	0.06%
19.	Chilies, Country Drugs, Senna Leaves, Palmyrah fiber, Personal effects, Vegetables and Provisions, Vehicles of Various Types and Accessories.	Advalorem	0.50%	0.30%	0.25%	0.15%
20.	Pepper, Cardamom.	Advalorem	0.02%	0.01%	0.01%	0.006%
21.	Tea.	Advalorem	0.15%	0.09%	0.08%	0.05%
22.	Coffee.	Advalorem	0.10%	0.06%	0.05%	0.03%
23.	Ginger, Machinery parts, Goods not otherwise specified – Imported/ Exported in the schedule.	Advalorem	0.30%	0.18%	0.15%	0.09%

**Notes:**

- (1). Wharfage charges on bulk cargo shall be recovered on the manifested tonnage of the vessels. In the case of export bulk cargo wharfage can be levied as declared in the EGM or with reference to the entire admitted quantity whichever is higher even if the EGM quantity is declared less than the admitted quantity. In case of Import Cargo, wharfage can be levied as declared in the IGM or entire delivered quantity whichever is higher.
- (2). 'Advalorem' wharfage on imports shall be calculated on C.I.F. value; on the exports on F.O.B. value; and on coastal cargo on value specified in the bill of coastal goods. Custom's Bill of Entry/Shipping Bill/Bill of coastal goods shall be the main document for assessing the value of cargo for wharfage purposes and where it is not available, the value will be determined based on Bill of Lading/Invoices, etc.





- (3). Wharfage shall be payable on all cargoes admitted to the said port's transit areas for shipment. Cargo once shut out if admitted to the port again for shipment will also attract wharfage irrespective of the fact the wharfage was levied on an earlier occasion.
- (4). **Transshipment:**
- (i). Goods consigned to ports other than Tuticorin as per the Bill of lading, if landed at Tuticorin for transshipment, shall be considered as transshipment cargo so long as it remains within the port security area, and shall pay single wharfage payable on landing.
  - (ii). For transshipment of cargo from ship to ship (swapping) outside the Port basin, wharfage shall not be collected. But, both the vessels shall pay 25% of the Port dues and charges of other services rendered as per the rates prescribed in the Scale of Rates except in respect of food grains manifested for Indian Ports.
  - (iii). As regards, transshipment of cargo from vessel to vessel inside the Harbour basin without using the landing place, the vessels shall pay Port dues and other charges as applicable in full, and 50% of single wharfage charges.
  - (iv). If transshipment cargo goes out of the port security area and thereafter comes into the port security area for loading into the vessel, the same shall not be treated as transshipment cargo and the cargo shall pay the wharfage again for loading into the vessel.
  - (v). Cargo transshipment fee @ `3/- per tonne will be collected for cargo handled at the anchorage.
  - (vi). A fee on cargo transfer from vessel to barge or vice versa in the harbour basin will be levied at 50% of the wharfage rate prescribed in Schedule 3.1. of the Scale of Rates in addition to the wharfage leviable on such cargo for handling at berth.
- (5). In case of cargo loaded into a vessel and subsequently unloaded due to various reasons, no wharfage shall be levied if the cargo is reshipped in the same vessel without leaving the port's premises. Wharfage shall, however, be levied again if the cargo is reshipped in another vessel.
- (6). Wharfage on goods from vessels in distress:

Item No.	Classification for purpose of wharfage	Dues payable
(i).	Cargo of other ports landed from vessels in distress	Wharfage rate as prescribed in Schedule 3.1. shall be levied.
(ii).	Cargo that has paid exports wharfage at Tuticorin but has not been carried to destination.	No wharfage shall be levied at the time of landing or at the time of reshipment or if removed out of the VOCPT premises.
(iii).	Cargo of other ports reshipped without having left the VOCPT premises.	No wharfage shall be levied at the time of shipment.

- (7). On packages containing articles of miscellaneous character, wharfage charges shall be levied at the rate applicable to individual cargo items.
- (8). In the case of hazardous cargo, (i.e.) cargo identified as such in International Maritime Dangerous Goods Code (IMDG), classified as "Goods not otherwise specified", vide SI.No.16 and 23 of the above schedule, 100 percent of the wharfage shall be recovered over and above the normal dues".



- (9). The following categories of goods shall be exempted from wharfage charges:
- (i). Bonafide consumable/ Non-consumable ship stores;
  - (ii). Passenger's and Seaman's Bonafide baggage and personal effects accompanying them;
  - (iii). Empty gunnies and twines sent to ships to facilitate landing or loading of cargoes in bulk order replacing wet or torn bags;
  - (iv). Goods consigned to or by the VOCPT;
  - (v). Postal mail bags.
- (10). The box rate prescribed for cargo in FCL containers in serial number 6(b) and 6(d) in schedule 3.1. above will also apply in the case an LCL (Less than Container Load) container coming in and going out of the VOCPT as a unit load.
- (11). All goods intended for shipment shall be assessed on export application. Similarly, all goods landed within the limits of port of Tuticorin shall be assessed on import application.
- (12). The wharfage shall be calculated on the total tonnage of each item of goods. For this purpose the gross and if the circumstances require, the net units of each package as specified in the relative invoice or other shipping document shall be reckoned with, subject to test check by the port authorities. In the absence of these documents or the specification of the gross units therein, the units actually arrived at by test check shall be taken as the gross units.
- (13). Before classifying any cargo under 'unspecified category' in the wharfage schedule, the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in those schedules

### 3.2. SCHEDULE OF DEMURRAGE CHARGES

#### 3.2.1. FREE PERIOD

Sl. No.	Particulars	Imports	Exports
1.	General Cargo except Raw Cashew (Imports) and Wheat (Exports)	3 days	10 days
2.	Raw Cashew (Imports)	5 days	–
3.	Wheat (Exports)	–	15 days
4.	Salvaged goods (Imports)	3 days	3 days

#### Notes:

- (1). For the purpose of calculation of free period, Customs holidays and the port's non operating days shall be excluded.
- (2). (i). Free period for imports shall be reckoned with following the date of complete discharge of the goods from the vessel on to jetties, quays or wharves.
- (ii). When goods are landed from the vessel into lighters, barges or other floating crafts, the three working days shall be calculated from the date of complete discharge of goods from the lighters, barges or other floating crafts on the jetties, quays or wharves.
- (iii). In the case of salvaged goods, the free days shall be reckoned with from the day following the date of notification of salvage by the receiver of wrecks in the official Gazette of Tamil Nadu State.





- (3). (i). Free period for all exports except salvaged goods shall commence from the actual date of receipt of the goods in transit area at Zone A and Zone B.
- (ii). In case of salvaged goods (export) free period shall commence from the date on which the goods are actually salvaged up to the date the vessel commences loading.
- (4). **Transshipment cargo**
- The maximum period as per export cargo will be allowed and thereafter demurrage charges shall be levied as prescribed for export cargo.
- (5). In the case of goods shut out by one vessel and subsequently shipped by another vessel the free period shall count upto 21 days excluding Customs holidays and port's non-operating days, and thereafter demurrage charges shall be payable till the goods are shipped.

### 3.2.2. SCHEDULE OF DEMURRAGE CHARGES

Sl. No.	Description	Unit	For Zone A	
			Import (in `)	Export (in `)
1.	For the first six days.	Per day per wharfage unit	1.85	1.20
2.	For the next six days.	-do-	3.00	2.35
3.	Thereafter.	-do-	5.85	4.70

Note:

(i). For Zone 'B', 50% of the above rates shall apply.

(ii). In respect of Import, 75% of the rates prescribed above shall be levied for open storage of cargoes at wharf area.

#### Notes:

- (1). (i). The transit area shall be the area within the security wall excluding warehouse and open area leased for storage of cargo.
- (ii). In exigencies, if import/export cargo require transit space and transit sheds are full/ there is shortage of space in transit sheds, some warehouse/s can be declared as "transit area" for the duration of congestion and all consignment will be eligible for storage on the transit terms during that period. These arrangements shall be approved by the Chairman on a case to case basis.
- (2). No export cargo shall be admitted into the port premises without the permission in writing from the authorised official of the port. Normally, export cargo for a vessel shall be admitted only after the vessel is opened for exports.





- (3). While calculating the demurrage charges, the unit to be adopted shall be the same as prescribed for levy of wharfage. Where the wharfage is prescribed on 'per unit' or on 'Advalorem' basis, the demurrage shall be calculated on the basis of weight of 'one tonne'.
- (4). A minimum charge as for one tonne/one cubic metre shall be levied.
- (5). Demurrage shall be collected on the basis of the actual weighment as determined by the weighbridge, and /or the railway receipt as issued by the Railway authority for carrying the cargo.
- (6). Demurrage charges on unclaimed goods shall be charged from master of the ship or the steamer agents upto 2 months from the date of discharge, if they are not cleared within two months from the date of complete discharge of the vessel from which they were landed.
- (7). Once demurrage charges begins to accrue no allowance shall be made for Sundays and port's non-operating days.
- (8). Delivery of Goods

Goods shall not be delivered to owner or consignee unless all dues leviable thereon, including demurrage charges are paid.

- (9). Congestion of Goods:

If at any time the VOCPT apprehends a serious congestion in the transit sheds or the transit area which may affect the rapid transit of goods through the port, it may direct the owners or consignees of any specific goods to remove such goods from the port premises within a specified period. If the goods are not removed within that period, the VOCPT may itself remove them and shall restack in any other place at the expense and at the sole risk of the owners or consignees. Goods so removed shall be charged demurrage fees at the rate of 100% of the wharfage plus actual handling charges incurred by the port.

- (10). Goods detained by Customs:

The period during which the goods are detained by the Commissioner of Customs for the purpose of analytical test or technical tests, other than ordinary process of appraisement and certified by the Commissioner of Customs to be not attributable to any fault or negligence on the part of the Exporter, for such periods of detention, the demurrage charges shall be recovered as under:

First 45 days	:	Free
46 days to 60 days	:	25% of actual demurrage charges
61 days to 90 days	:	50% of actual demurrage charges
Beyond 90 days	:	100% of actual demurrage charges

Actual demurrage charges at full rates shall be worked out as per Scale of Rates at the appropriate slab as applicable after 45 days and the concessional rate mentioned above shall be applied thereon the full demurrage charges leviable.

The first 45 days shall be reckoned with as follows:

- (i). first 45 days after expiry of free days if cargo is detained by the Customs before expiry of free days;
- and,



- (ii). first 45 days from the date of detention if cargo is detained by the Customs after accrual of demurrage charges.

The detention certificate for availing the above concession shall be submitted within a period of six months from the date of clearance of goods.

**Notes:**

- (i). The above time limits will be inclusive of all holidays.
- (ii). The time limits can be relaxed in cases of Acts of God or the extra ordinary circumstances beyond human control.
- (11). For re-stacking of cargo at VOC berth where siding is available for rail movement, the rate applicable as per schedule of Demurrage charges will be levied.
- (12). Demurrage charge on both import and export cargo shall not accrue for the period when the VOCPT is not in a position to deliver/ship cargo when requested by the user.
- (13). If operational area is licenced on rental terms to users, demurrage charge on cargo stored thereat shall not be levied again.

### 3.3. Licence (Storage) Fee

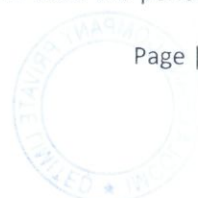
Sl. No.	Particulars	Unit	Rates for Zone A (in ` )
1.	<b>COVERED SPACE</b>		
	(i). For the first two weeks.	Per 10 sq. mtr./week or part thereof	155.00
	(ii). For the third and fourth week.	-do-	310.00
	(iii). For the fifth and sixth week.	-do-	465.00
	(iv). Thereafter for every subsequent week.	-do-	542.50
2.	<b>OPEN SPACE</b>		
	(i). Outside the security wall of the Port.		
	Per month or part thereof	Per sq. mtr.	6.40
	Per week or part thereof		1.60
	(ii). Within the Security wall of the Port.		



	Per month or part thereof	-do-	8.00
	Per week or part thereof		2.00
	(iii). M.P.Shed and verandas of warehouses.	Per sq. mtr. / per month or part thereof	45.00
	(iv). Storage of containers outside the security wall (Storage area to be hired shall not be less than 2000 square metre)	-do-	4.50
	(v). For storage of coal in open space	-do-	
	(a). For cargo lying upto 7 weeks	-do-	2.00
	(b). For cargo lying for 8 <sup>th</sup> to 9 <sup>th</sup> weeks	-do-	4.00
	(c). For cargo lying for 10 <sup>th</sup> to 13 <sup>th</sup> weeks	-do-	6.00
	(d). For cargo lying thereafter	-do-	10.00
For Zone 'B' 50% of the rates prescribed above shall apply.			

**Notes:**

- (1). No goods shall be stored upon any land or in any shed specified in clause (c) of sub section (1) of section 49 of Major Port Trusts Act, 1963, and no such land or shed shall be used except under a licence issued for such purpose by the VOCPT or its authorised official.
- (2). The licence issued by the VOCPT shall be in force for the period specified therein.
- (3). Licence (storage) fee shall be payable in the manner specified in the licence and failure to pay the rates in accordance therewith shall attract penal interest as prescribed in point No.(vi) (b) in 1.2. General Terms and Conditions in Chapter I, on the amount due but not paid. If for any reason, outstanding due with penalty is not paid within 7 days of its due, the authorised official of the VOCPT shall have the right to terminate the licence and resume the land or shed allotted there under and in case of such termination or resumption of the land or shed, the licensee shall on no account be entitled to claim any compensation or to remove or take away the improvement if any made by him thereof.
- (4). Goods stored on the land or in the shed under the licence shall remain at the licensee's risk and V.O. Chidambaranar Port Trust or any of its officers shall not in any manner be liable for any pilferage, theft, damage or any loss whatsoever thereof.
- (5). The licensee shall not be permitted to sub-let the land or shed covered by the licence or any portion thereof. For any contravention of this condition, the licence is liable to be cancelled.
- (6). If goods are stored in areas not covered under the licence, double the rate, specified shall be charged from the licensee for the period from the date of storage till such storage is regularised or the goods are removed.
- (7). Any renewal of the licence issued shall be made only on an application made therefore. An application for renewal shall be made at least seven days prior to the date of expiry of the licence in case the period of





licence is one year or less than one year, and atleast 30 days prior to the date of expiry of the licence in the case of other licences. Provided that, in the event of no order being passed on an application for renewal before the date of expiry of the licence, the same shall continue to be valid on the terms and conditions specified therein till orders are passed on the application for renewal.

- (8). License(Storage) fee / Demurrage charges shall be payable on the packing materials such as gunny bags/pallet which are not cleared as soon as the cargo is exported/Imported and are remaining in the port beyond one day of the date of complete shipment/discharge of cargo.
- (9). 'Goods stacked beyond the prescribed period admissible as per Licence issued and not renewed by the Port will attract double the rate already applicable for Licence (storage) fee' from the date following the date of expiry of Licence.

### 3.4. License (Storage) Fee for Marshalling Yard

Sl. No.	Particulars	Unit	Rate in
A.	Covered Space		
1.	First slab of 3 days or part thereof	per 10 sq. mtrs.	100.00
2.	Second slab of 3 days or part thereof	per 10 sq. mtrs.	150.00
3.	Third slab of 3 days or part thereof	per 10 sq. mtrs.	200.00
4.	Fourth slab of 3 days or part thereof	per 10 sq. mtrs.	250.00
5.	Fifth slab of 3 days or part thereof	per 10 sq. mtrs.	300.00
6.	Thereafter for every subsequent slab of 3 days or part thereof	per 10 sq. mtrs.	350.00
B.	Open Space Available 9600 Sq. Mtrs.		
1	First slab of 3 days or part thereof	per sq. mtr.	1.00
2.	Second slab of 3 days or part thereof	per sq. mtr.	1.50
3.	Third slab of 3 days or part thereof	per sq. mtr.	2.00
4.	Fourth slab of 3 days or part thereof	per sq. mtr.	2.50
5.	Fifth slab of 3 days or part thereof	per sq. mtr.	3.00
6.	Thereafter for every subsequent slab of 3 days or part thereof	per sq. mtr.	3.50

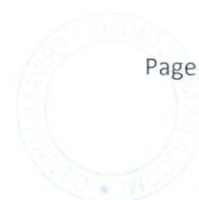
#### Notes:

- (i). The above rates are applicable for both export and import of cargo.
- (ii). Only rail borne cargo is entitled for this facility.
- (iii). Ships at berths will avail priority.
- (iv). The above rates are for bagging activities only.
- (v). Allotment will initially be for first 3 days only and renewable for subsequent slabs.

(ii) Rail borne bulk cargo without bagging or any other value addition activities will be entitled to 24 hours of free period from the time of storage admission/landing of the first consignment. Thereafter, rates as per above slabs will be applicable."



### CHAPTER – IV



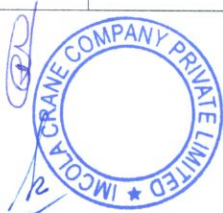
## CONTAINER RELATED CHARGES

### 4.1. CHARGES FOR SPECIAL SERVICES TO REEFER CONTAINERS

Sl. No.	Particulars	Rate per connection per 4 hours or part thereof		
		Up to 20' length (in `)	Above 20' length but up to 40' (in `)	Above 40' length (in `)
1.	Charges for electrical and other installation provided by the port including the charges for electricity consumed and monitoring the reefer containers.	106.00	159.00	212.00

### 4.2. CHARGES FOR HANDLING CONTAINERS USING MECHANICAL APPLIANCES

Sl. No.	Particulars	Rate per container per operation (in `)	
		Foreign	Coastal
1.	Loaded container upto 20' in length.	443.00	265.80
2.	Loaded container above 20' and upto 40' in length.	664.50	398.70
3.	Loaded container above 40' in length.	886.00	531.60
4.	Empty container upto 20' in length.	153.00	91.80
5.	Empty container above 20' and upto 40' in length.	229.50	137.70
6.	Empty container above 40' in length.	306.00	183.60
7.	For handling ICD containers from Railway Flat, and placement from Trailer to Berth and from Berth to Trailer. (For Each Operation.)		
	(i). Loaded Container upto 20' in length.	224.00	134.40
	(ii). Loaded Container above 20' and upto 40' in length.	336.00	201.60



(iii). Loaded Container above 40' length	448.00	268.80
(iv). Empty container upto 20' in length.	77.00	46.20
(v). Empty container above 20' and upto 40' in length.	115.50	69.30
(vi) Empty container above 40' length	154.00	92.40

**Notes:**

- (1). The charges prescribed above are payable per crane requisitioned by each applicant and supplied by the Port.
- (2). Premium to the extent of 25% on handling charges to be levied in case of hazardous containers.
- (3). Handling charge for transshipment container will be restricted to 150% of the charges prescribed for normal container for single operations i.e. loading or unloading. In case of coastal transshipment containers, handling charges will be calculated with reference to applicable handling charge for coastal container for normal handling operation in loading or unloading cycle.
- (4). A container from foreign port landing at the VOCPT for subsequent transshipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transshipment charge prescribed for foreign-going vessel and 50% of that prescribed for the coastal category.

**4.3. SCHEDULE OF STORAGE RENT ON EMPTY AND LOADED CONTAINERS.**

Sl. No.	Period of Occupation	(Rate per container per day or part thereof)					
		Foreign-going vessels			Coastal vessels		
		Upto 20' in length (in US \$)	Above 20' in length but upto 40' (in US \$)	Above 40' in length (in US \$)	Upto 20' in length (in `)	Above 20' in length but upto 40' (in `)	Above 40' in length (in `)
1.	INSIDE THE SECURITY WALL						
(i).	For Import and Export Containers						
	(a). For the first 5 days	Free	Free	Free	Free	Free	Free
	(b). From 6th to 15 <sup>th</sup> day	0.75	1.50	2.25	32.60	65.20	97.80
	(c). From 16 <sup>th</sup> to 22nd day	3.00	6.00	9.00	130.40	260.75	391.15
	(d). Thereafter	5.80	11.60	17.40	252.05	504.15	756.20





(ii).	For Transhipment Containers						
	(a). For the first 15 days (including the date of landing)	Free	Free	Free	Free	Free	Free
	(b). From 16 <sup>th</sup> to 30 <sup>th</sup> day	4.00	8.00	12.00	173.85	347.70	521.50
	(c). Thereafter	6.00	12.00	18.00	260.75	521.50	782.30
2.	<b>OUTSIDE THE SECURITY WALL</b>						
	Stacked in the Marshalling yard and /or in any other area (From the date of stacking)	0.75	1.50	2.25	32.60	65.20	97.80

**Notes:**

- (1). The period of free days shall run concurrently with the free period of PSA SICAL TERMINAL and not consecutively.
- (2). Premium to the extent of 25% on storage charges to be levied in case of hazardous containers.
- (3). Free dwell-time (storage) period for import containers shall commence from the day after the day of landing of the container. On expiry of the free period, storage rent shall be levied upto the time of delivery.

For export containers the free period shall commence from the time the container enters the terminal. On expiry of the free storage period, storage rent shall be calculated upto the time the container leaves the yard. The charges shall be calculated on a 24 hour basis.

**(4). Transhipment \ Re-export laden and empty containers**

- (i). The free storage rent period shall commence from the time of completion of discharge after the first carrier to the time of berthing of the second carrier. If the storage period exceeds the free period, the storage rent shall be calculated after the expiry of the free period upto the time of lift on. The charges shall be calculated on a 24-hour basis.
- (ii). In case of containers, the transhipment status shall be extended only to loaded containers. Empty containers meant for other Ports, if landed at Tuticorin shall not be considered as transhipment.



Containers that are de-stuffed within the security gate shall also not be treated as transhipment containers.

- (iii). The concession of transhipment to loaded container shall be withdrawn, if the loaded container goes out of the transit area.

#### 4.4. DEMURRAGE CHARGES FOR CONTAINERISED CARGO

##### 4.4.1. Containerised Import Cargo

Sl. No.	Particulars	Unit	Rate per day (in `)
	(From the date of destuffing)	Per tonne or part thereof	
1.	First 3 days	- do -	Free
2.	For the next 6 days or part thereof.	- do -	1.85
3.	For the next 6 days or part thereof.	- do -	3.20
4.	Thereafter for every 6 days or part thereof.	- do -	6.35

##### 4.4.2. Containerised Export Cargo

Sl. No.	Particulars	Unit	Rate per day (in `)
1.	First 15 days	Per tonne or part thereof	Free
2.	For the next 6 days or part thereof.	- do -	1.20
3.	For the next 6 days or part thereof.	- do -	2.35
4.	Thereafter for every 6 days or part thereof.	- do -	4.70

#### Notes:

- (1). For the purpose of calculation of free period, Customs holidays and the port's non-operating days shall be excluded.



- (2). The stuffed cargo removed from the container and cargo meant for stuffing in the container stacked in transit area other than the space allotted on lease for that purpose, will be liable for demurrage as applicable to other cargo specified as below:
- (i). Containerised Import cargo:  
  
For purpose of demurrage, the free days for such import cargo released with from the container shall count from the date following the date of release of the import cargo from containers.
  - (ii). Containerised Export cargo:  
  
For purpose of demurrage, the free days for such export cargo shall be reckoned from the date on which cargo is admitted in the transit area and demurrage leviable, if any, shall be computed from the day following the completion of free days till such cargo has been stuffed into containers.
- (3). The storage charges on abandoned FCL containers/shipper owned containers shall be levied upto the date of receipt of intimation of abandonment in writing or 75 days from the day of landing of the container, whichever is earlier subject to the following conditions:
- (i). The consignee can issue a letter of abandonment at any time.
  - (ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,
    - (a). the Line shall resume custody of container along with cargo and either take back it or remove it from the port premises; and
    - (b). the line shall pay all port charges accrued on the cargo and container before resuming custody of the container.
  - (iii). The container Agent /MLO shall observe the necessary formalities and bear the cost of transportation and destuffing. In case of their failure to take such action within the stipulated period, the storage charge on container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for destuffing the cargo.
  - (iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be destuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the





day the Custom order release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and destuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the port premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

#### General Notes for schedule 4.1. to 4.4.

- (1). Cargo in containers originally manifested at the Port of shipment landed at wharf for transshipment shall be charged single wharfage dues payable on landing.
- (2). General manifest must be produced immediately to the authorised port official for verification by a test cheek of stuffed cargo in container brought for transshipment.
- (3). The applicant shall accept all risks and responsibilities for goods stored at the rental space so allotted, and shall make his own arrangements for security of the goods stored in such spaces.
- (4). Hire charges for port machineries and appliances whenever utilised by the shipper will be charged separately according to the rates prescribed in the Scale of Rates.
- (5). Storage charge on container/demurrage charges on cargo shall not accrue for the period when the VOCPT is not in a position to deliver/ship cargo when requested by the user.
- (6). If operational area is leased on rental to users, storage charges on container/demurrage on cargo stored therein shall not be levied again.

### CHAPTER – V

#### MISCELLANEOUS CHARGES

##### 5.01. SCHEDULE OF WEIGHMENT CHARGES for ZONE 'A' AND 'B'

Sl. No.	Particulars	Unit	Rate (in ` )
1.	Weighment Charges for Zone A and B.	Per tonne	2.95

			(subject to a minimum of ` 35.00)
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**Note:**

The weighment charges shall be levied on the total weight of the cargo weighed by the port on the weighbridges or weighing scales under each application for weighment, duly rounded off to the next higher tonne.

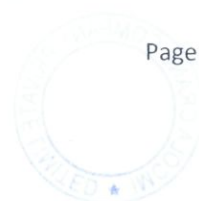
**5.02.1. CHARGES FOR OCCASSIONAL USE OF WHARF CRANES, OTHER CRANES AND FORK LIFT TRUCK**

Sl. No.	Particulars	Unit	Foreign/Others (in ` )	***Coastal (in ` )
1.	Upto 1 tonne	Per tonne per hoist per package	17.00	10.20
2.	Over 1 tonne and upto 5 tonnes.	-do-	28.00	16.80
3.	Over 5 tonnes and upto 10 tonnes	-do-	42.00	25.20
4.	Over 10 tonnes and upto 15 tonnes.	-do-	70.00	42.00
5.	Over 15 tonnes and upto 30 tonnes	-do-	140.00	84.00
6.	Over 30 tonnes.	-do-	315.00	189.00

\*\*\* The rates prescribed in column 4 shall be applicable for coastal cargo and containers eligible for concessional tariff, for ship-shore transfer, transfer from / to quay and to / from storage yard.

**5.02.2. CHARGES FOR HIRE OF GRAB FOR WHARF CRANE AND OTHER MECHANICAL APPLIANCES TO MASTERS, OWNERS OR AGENTS OF VESSEL**

Sl. No.	Particulars	Unit	Foreign/Others (in ` )	***Coastal (in ` )
1.	10 Tonne Grab wharf crane	Per shift	1912.00	1147.20
2.	10Tonne Grab wharf crane	Per half shift	956.00	573.60
3.	20Tonne Grab wharf crane	Per shift	9636.00	5781.60



4.	20Tonne Grab wharf crane	Per half shift	4818.00	2890.80
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\*\*\* The rates prescribed in column 4 shall be applicable for coastal cargo and containers eligible for concessional tariff, for ship-shore transfer, transfer from / to quay and to / from storage yard

**Notes:**

- (1). Berth hire includes cranage component and hence no separate charges will be levied for wharf crane provided by the port (subject to availability) for loading and unloading of cargo from vessels including barges and lighters. The charges for use of grab will, however, be collected as prescribed in the above schedule.
- (2). The cranes or equipment provided shall not be used for purposes other than that for which application was made.

**5.03. CHARGES FOR HIRE OF CRANES, FORK LIFT TRUCK AND OTHER MECHANICAL APPLIANCES FOR PURPOSE NOT SPECIFIED IN SCHEDULE 5.2. and 5.2.1.**

Sl. No.	Particulars	Unit.	Foreign/Others Rates per craft/ equipment / appliance (in ` )	***Coastal/ Rates per craft/ equipment / appliance (in ` )
1.	Mobile Cranes of 10 T at 45'	Per hour or part thereof.	1,062.00	637.20
2.	Mobile Cranes of 75 T at 10', 15T at 40.'	-do-	1,221.00	732.60
3.	Marshall demag Crane.	-do-	572.00	343.20
4.	Fork Lift Truck(3 T).	-do-	189.00	113.40
5.	Floating Crane.	-do-	1,528.00	916.80
6.	Front End Loader 3 tons/7 tons.	-do-	614.00	368.40





7.	Wharf Crane			
	(a) Wharf Grab Cranes(20 Tonne)	-do-	3308.00	1984.80
	(b) Wharf Crane(6 tonnes)	-do-	3157.00	1894.20
	(c) Wharf Crane(10 tonnes)	-do-	3424.00	2054.40
8.	Road Roller.	-do-	153.00	--
9.	Fire fighting equipment.			
	(i). For salvage and other purposes.	Per hour or part thereof.	808.00	--
10.	For stand by duties			
	(a). Between 1800 hrs and 2200 hrs.	Entire period or part thereof.	354.00	--
	(b). Beyond 2200 hrs to 0600 hrs.	Per shift or part thereof.	708.00	--
11.	Penalty for improper use of appliance.	Every occasion	201.00	

\*\*\* The rates prescribed in column 5 shall be applicable for coastal cargo and containers eligible for concessional tariff, for ship-shore transfer, transfer from / to quay and to / from storage yard.

**Notes:**

- (1). In respect of use of the port machineries outside the port limits, a surcharge of 20 percent on the charges prescribed above shall be levied.
- (2). When fire fighting units use foam, the actual cost of foam used in the operation shall be charged extra.
- (3).
  - (i). If the requisition of the equipment is not cancelled before 2 hours of the commencement of the shift, the charges for the full shift will be recovered.
  - (ii). On the Port's non-operating days, full charges for the period of requisition will be recovered if written notice of cancellation is not given during the working hours of the day prior to the date of requisition or when the equipment is not fully utilised as requisitioned.



- (4). While computing the hire charges, the actual hours of work shall be totalled and rounded off to the next higher hour after completion of the end of the work. For this purpose the time taken by the machinery to move from the yard to work spot and back to the yard will be included.

#### 5.04. WAY LEAVE CHARGES:

Sl. No.	Particulars	Unit.	Rates (in `)
1.	Way leave charges for pipelines, overhead wires and underground cables.	Per Sq. mtr. per annum.	1.42
2.	Way leave charges for the conveyor system owned by M/s Tuticorin Thermal Power Station (TTPS) in the port area on coal moved through conveyor.	Per Sq. mtr. per annum	1.42
For underground cables, 50% of the applicable charges shall be levied.			

#### Notes:

- (1). Areas chargeable under Way Leave Licence shall be arrived based on the following formulae:
- For a single pipe line:  
Length of the pipe line multiplied by the Diameter (D) of pipe lines plus working space of 30 c.m(i.e)  
 $A = L + (D + 30 \text{ cms.})$
  - For more than one pipe:  
Length of the pipeline multiplied by the actual distance (D) between the extreme sides of the outer most pipes plus working space of 30 c.ms. (i.e.)  $A = L (D + 30 \text{ c.ms.})$
  - For pipe line over pedestal:  
Length of the pipeline multiplied by the width (D) of the foundation of the pedestal plus working space of 30 c.ms. (i.e.)  $A = L (D + 30 \text{ c.ms.})$
  - For overhead wires:  
Length of the overhead line multiplied by the distance (D) between the extreme ends of the longest street on the pole plus working space of 60 c.ms. (i.e.)  $A = L (D + 60 \text{ c.ms.})$
  - For underground cables: Length of the cable multiplied by 15.c.ms. for each cable laid plus working space of 90 c.ms. (I.e.) for a single cable  $A = L (15 \text{ c.ms.} + 90 \text{ c.ms.})$ ; for double cable  $A = L (2 \times 15 \text{ c.ms.} + 90 \text{ c.ms.})$  and so on.



5.05. CHARGES FOR USE OF PORT'S PIPELINES TO TRANSPORT SHIPSTORES, BUNKER OIL, ETC., TO SHIPS.

Sl. No.	Particulars	Unit	Rates	
			Coastal vessel (in `)	Foreign – going vessel (in US\$)
1.	Charges for use of port's pipelines to transport shipstores, bunker oil, etc., to ships	Per kl.	12.45	0.366

5.06. RENTAL CHARGES FOR ROOMS FOR USE IN CONNECTION WITH SHIPPING OPERATION

Sl. No.	Particulars	Unit	Rates (in `)
1.	Rooms in the I floor of Transit sheds at I&II berths of VOC Wharves.	Per room per calendar month or part thereof	460.00
2.	Rooms at the Coal Jetty I and II:		
	(i). Rooms of area 8.23 sq.mtr.	-do-	460.00
	(ii). Rooms of area 11.20 sq. mtr.	-do-	627.00
3.	Room available at additional berths:		
	(i).Each Measuring 30 sq. mtr. in Southern Side Building	Per room per calendar month or part thereof	979
	(ii).Each measuring 41 sq. mtr. in the ground floor at the Northern Buildings.	-do-	1,305.00





**Notes:**

- (1). The charges prescribed above are inclusive of water charges.
- (2). Electricity charges shall be levied on actual consumption based on the meter reading.
- (3). The room will normally be allotted by the VOCPT on request in writing in the order of priorities of the dates of receipt of such requests by the parties concerned.
- (4). The allotment of room is subject to cancellation by the authorised official of the VOCPT at any time without prior notice and without assigning any reason thereafter.

**5.07. RENT FOR ALLOTMENT OF ROOM FOR STEAMER AGENTS WITHIN THE FORESHORE PREMISES**

Sl. No.	Particulars	Unit	Rates (in `)
1.	Rent for allotment of Room for steamer agents within the foreshore premises. (Inclusive of Water Charges)	Per month per room	572.00

**Notes:**

- (1). The charges prescribed above are inclusive of water charges.
- (2). Electricity charges shall be levied on actual consumption based on the meter reading.

**5.08. RENT FOR OCCUPATION OF COMPARTMENTS IN THE COAL MAZDOOR LINES IN THE PORT PREMISES.**



Sl. No.	Particulars	Unit	Rates (in `)
1.	Rent for occupation of compartments by the coal landing contractors for housing the coal labourers in the coal mazdoor lines in the foreshore premises.	Per month or part thereof for each compartment.	94.00

Note:

The charges prescribed above are inclusive of water charges and electricity charges.

**5.09. CHARGES FOR HIRE OF DRY DOCK TO THE OWNERS OF SAILING VESSELS AND TO OTHER GOVERNMENT DEPARTMENTS FOR DRY DOCKING THEIR VESSELS**

Sl. No.	Particulars	Unit	Rates (in `)
1.	Dry dock services		
	(i). For docking the vessels.		
	(a). Sailing vessels	Each	4,396.00
	(b). Floating Crafts.	- do -	5,522.00
2.	For undocking the vessels	- do -	1,062.00
3.	Daily hire charges for the Dry Dock		
	(i). For the first ten days.	Per day or part thereof	354.00
	(ii). From 11th day to 20th day.	- do -	525.00
	(iii). From 21st day and subsequent days.	- do -	708.00
4.	Electricity Charges	- do -	12.00



**Notes:**

**Advance Hire Charges**

(i).	For I spell of 10 days.	5,665.00
(ii).	For II spell of 10 days	2,549.00
(iii).	For III spell of 10 days.	3,540.00

- (1). Daily hire charges shall be levied excluding the day of docking and undocking of the vessels.
- (2). The charges prescribed above include the ship weight and pumping charges; but, do not include charges for the supply of fresh water, cranes and other facilities.
- (3).
  - (i). The dry dock in normal cases shall be given only for a period of ten days and owners/authorised agents of vessels in dry dock shall endeavour to complete all repair within 10 days period.
  - (ii). In no case shall the dry dock be kept occupied for more than 30 days.
  - (iii). When a vessel of an outside party is in the dry dock and the dry dock facility is urgently required for carrying out any emergency repair to the floating craft of the Port, the owner / authorised agents of vessel in the dry dock, shall vacate the same within seven days from the receipt of a notice to that effect.
- (4). On allotment of dry dock the hire charges towards docking, undocking and daily hire charges etc., as stipulated above shall be paid in advance before the vessel can be placed in the dock. If the vessel is to remain in the dock beyond the initial period of ten days, then further hire charges for the second and third spells of 10 days respectively, shall be paid in advance, as the case may be.
- (5). In the event of the vessel not being ready to be docked, or not using the dock on the day notified for the admission of the vessel into the dock, cancellation charges equivalent to the advance paid in respect of any vessel as per provision prescribed in note (4) will be charged.
- (6).
  - (i). Prior to the time regulated for the admission of any vessel into the dock, the necessary arrangements must be carried out by the hirer on board the vessel in consultation with the authorised official of the VOCPT.





- (ii). If on inspection, it is found that necessary arrangements have not been duly carried out, the vessel may be refused admission into the dock. In such case all expenses incurred by the Port in respect of the docking of such vessel, shall be borne by the owners/authorised agents of the vessel and shall be adjusted against the advance paid.
- (7). The bill for the use of dry dock will be furnished to the hirer, after undocking of the vessels, who shall pay the balance charges, if any, due to this Port.
- (8). The VOCPT or its employees shall not be liable for delay caused to or any damages suffered by a vessel whilst docking or undocking during its stay in the dry dock.
- (9). Vessels of the following dimensions can only be dry docked.

Particulars	Feet	Metre
Length	120	36.58
Breadth	29	8.84
Draft	6	1.83

- (10). Vessels having a draft of 5 feet 6 inches and above can be docked and undocked only at full tides. In case after completion of repairs, a vessel is held up in the dry dock for want of sufficient tide, such delays shall be to the account of the owner and he shall pay hire charges at the rates applicable till the vessel is undocked.
- (11). The hirer shall also make good the cost of any damage, repairs or loss to the dock, its appurtenances, plant, gear tackle, etc, caused by the vessel arising directly or indirectly in the course of the hire.
- (12). The hirer of dry dock shall make his own arrangement for watchman duty for the vessels, etc., round the clock.
- (13). (i). The owners of the vessel shall make their own arrangements to carry out repairs to their vessels at their cost.



- (ii). The facilities of the port's workshop shall be given on payment of prescribed charges only when spare capacity is available in the port workshop for taking up repairs.
- (14). Whenever a vessel is docked or undocked outside normal working hours of port's workshop, the over-time charges if any payable to the departmental staff shall be borne by the hirers of the dry dock in addition to the usual charges.
- (15). Fire protective measures are to be arranged by the hirers at their cost.
- (16). The hirer should agree to indemnify the port against all claims for compensation by or on behalf of any workmen (Coolies or Labourers as the case may be) employed by him in connection with the work under execution in the premises of dry dock, for injury or death by an accident under the Indian Workmen's Compensation Act of 1923 and that the decision of the Commissioner of Workmen's Compensation with respect to the amount of such indemnity will be accepted as final.

#### 5.10. HIRE CHARGES FOR HIRE OF TOOLS AND PLANTS TO GOVERNMENT DEPARTMENTS

Sl. No.	Particulars	Unit	RATES	
			Monthly (in `)	Daily (in `)
1.	200 ton Dumb Barge.	Each	30,586.00	1,528.00
2.	100 ton Mud Punts.	-do-	11,894.00	596.00
3.	Welding Set (Portable)	-do-	2,348.00	118.00
4.	Fire Service Trailer Pump.	-do-	2,549.00	130.00

#### Notes:

- (1). The tools and plant shall be hired out to other Government departments and private parties for services within the foreshore under special circumstances and when not required for port's use.
- (2). When the above plants are lent to private parties the hire charges shall be double the rates prescribed above.



- (3). The hirer charges shall be paid in advance. If, however, the period exceeds beyond a calendar month, the hire charges for each calendar month or part thereof shall be paid in advance.
- (4). The period of hire shall be reckoned with from the time the tools / plant leaves the stores till it is returned to the said stores.
- (5). All repairs (except due to fair wear and tear) during the periods of hire shall be borne by the hirer. The decision of the authorised official of the VOCPT shall be final as to what repairs should be borne by the hirer and by the VOCPT.
- (6). The hirer shall bear all charges connected with packing, handling in the stores, conveyance and other incidental expenses in connection with the despatch of the said tools and plant from the stores and return thereto including freight charges, if any, and also erecting and dismantling charges. If during the period of hire it is found necessary to send the said tools and plant to the port's workshop and or other outside workshop for repairs, all conveyance and incidental charges to and fro shall be borne by the hirer.

#### 5.11. LICENCE FEES

Sl. No.	Particulars	Unit	Rates (in `)
1.	Cooper Licence		
	(i). For basket carriers	Each calendar year or part thereof for each	35.00
	(ii). For basket and casks	-do-	35.00
	(iii). For issue of duplicate licence when the original is defaced as to be illegible or is lost.	Each occasion	18.00
2.	Penalty for non-renewal of Licence.	Each	18.00

#### Notes:

- (1). Failure to apply for renewal of the licence one month before the expiry thereof may entail cancellation of the licence or levy of a penalty per licence in addition to the usual licence fee.
- (2). Refund for unexpired period of licence will not be allowed.

#### 5.12. CHARGES FOR ISSUE OF PHOTO PERMITS





Sl. No.	Particulars	Unit	Rates (in `)
1.	For issue of fresh photo permit	Each.	35.00
2.	For the renewal of photo permit.	-do-	35.00
3.	For issue of a duplicate permit.	-do-	47.00
4.	Penalty for non renewal of permit, and issue of duplicate permit to employees	-do-	18.00

**Notes:**

- (1). (i). The employees of the port shall be issued fresh permit at the time of appointment free of charge and the same shall also renewed every three years thereafter free of charge.
- (ii). In case the permit issued free of charge to the employee of the VOCPT is lost or defaced, duplicate permit may be issued on payment of charges as prescribed in the schedule.
- (2). The charges once paid as per this schedule shall not be refunded in any case eventhough claim is received for the refund prior to the preparation and issue of fresh or duplicate permits or prior to the renewal of the permits by the Port.

**5.13. CHARGES FOR THE ISSUE OF TEMPORARY PASSES.**

Sl. No.	Particulars	Unit	Rates (in `)
1.	Charges for the issue of temporary passes for admission to the Harbour.(Either at Zone A or Zone B)	Per head	12.00

**Notes:**

- (1). The payment of the charge will not automatically entitle to get a pass.
- (2). Temporary passes issued to distinguished persons, officials and others visiting the port shall be exempted from the levy of this charge.
- (3). The validity of Daily Pass is 24 Hours from the time of entry.
- (4). The temporary entry permit beyond 24 hours will be issued @ ` 50/- per permit for 15 days and ` 100/- for period beyond 15 days and up to 30 days and the maximum period of temporary entry permit is restricted to 30 days.

**5.14. CHARGES FOR TAKING PHOTOGRAPHS OR SHOOTING OF FILMS IN THE HARBOUR PREMISES**



Sl. No.	Particulars	Unit	Rates (in `)
1.	Shooting of film by film making company or private parties.	Per calendar day or part thereof	10,000.00
2.	For still photographs of export/import cargoes.	- do -	466.00
3.	Taking videography related to operational activities.	- do -	2,124.00
4.	Taking photography related to operational activities.	- do -	236.00
5.	Taking photographs of the parties or of the crew on board, the ships and in case not covered in case (1) to (4) above.	Each time each party	47.00

**Notes:**

- (1). (i). The charges prescribed above shall be paid in advance and no refund of such payment shall be allowed for any failure/ cancellation of the programme.
- (ii). If the cancellation of programme is at the instance of the Port the charges paid shall be refunded, subject to claim in time.
- (2). The hire charges for any craft and/or appliance of the Port, if any, that are supplied and used by the film making company or by those taking photographs shall be levied as per the rates prescribed in the Scale of Rates in addition to charges payable under this schedule.

**5.15.1. FEES FOR SALVAGE OF GOODS**

Sl. No.	Particulars	Advalorem Rate in %	Minimum charges (in `)
1.	Less than ` 10, 000.	-	1540.00
2.	` 10, 000 and more but less than ` 20, 000.	12	1965.00
3.	` 20, 000 and more but less than ` 50, 000.	7	2670.00
4.	` 50, 000 and more.	5	3695.00

**5.15.2. FEES FOR SERVICES OF DIVERS**

Sl. No.	Particulars	Unit	Rates	
			Up to a maximum of 4 hours	Above 4 hours (in `)



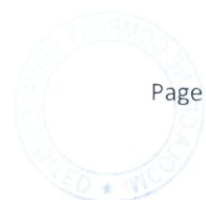
			(in `)	
1.	Weekdays.	Per hour	767.00 (subject to a minimum of ` 1,487.00)	1,198.00
2.	Sundays and port's non-operating days.	Per hour	1,133.00 (subject to a minimum of ` 2,266.00)	1,699.00

**General notes relating to schedule 5.15.1. and 5.15.2.**

- (1). The charges include the cost of ordinary diver's charges but are exclusive of any special charges which may be necessary in certain cases, such as the use of tugs, barges or other craft which will be charged at actual cost or at the rates prescribed in the Scale of Rates, as the case may be. In case of goods liable to damage by water, the advalorem percentage prescribed above shall be recovered on the sale value or Customs valuation, as the case may be.
- (2). The diver's charges shall be levied in all cases of diving work carried out on special requisitions for the services, of the Port Diver irrespective of the results of search or examinations by the divers. Where a search is undertaken for recovery of goods lost over board and such goods are recovered, charges as per salvage shall be levied.
- (3). When a diving boat is towed by a launch, the towage charges shall be levied extra.

**5.16. LICENCE FEE FOR ENTRY OF VEHICLES / EQUIPMENT:**

			Rates (in `)
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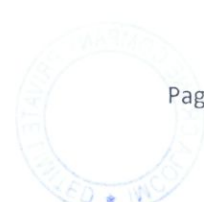




No.	Particulars		Entry into Check Post I and II (excluding inside the Security Wall) Zone A and B	Entry into Check Post I and II (including inside the Security Wall) Zone A and B
1.	(a). Hand Carts-Per day	Each	3.00	3.75
	(b). Hand Carts- Per annum	Each	75.00	93.75
2.	(a). Animal Carts-Per day	Each	3.00	3.75
	(b). Animal Carts-Per annum	Each	150.00	187.50
3.	Passenger Carriers – Per day	Each	15.00	18.75
4.	(a). Carrier of goods- Per day	Each	15.00	18.75
	(b). Carrier of goods - Per annum	Each	1,800.00	2,250.00
5.	(a). Private Cargo Handling Equipment - Per day	Each	120.00	150.00
	(b). Private Cargo Handling Equipment -Per month	Each	1,875.00	2,343.75
	(c). Private Cargo Handling Equipment - Per half year	Each	9,000.00	11,250.00
	(d). Private Cargo Handling Equipment -Per annum	Each	16,920.00	21,150.00
6.	Issue of duplicate licence against 1 to 3	Each	60.00	75.00
7.	Issue of duplicate licence against 4 and 5	Each	90.00	112.50
8.	All light vehicles viz two wheelers, three wheelers, cars, vans etc. per Annum	Each	-----	10.00

**Notes:**

- (1). Hand craft and Animal carts shall be required to pay the licence fee only for entry into the Security Wall in Zone A and Zone B.
- (2). The following vehicles will be exempted from the payment of licence fee:



(i). Vehicles belonging to

(a). V.O. Chidambaranar Port Trust and other Major port trusts and

(b). Tuticorin Thermal Power Project.

The above vehicles should obtain general or specific permission from the concerned head of the department of the port trust or the Traffic Manager of the port trust.

(ii). Regular route buses and school buses.

(iii). All vehicles carrying household goods to and from residence of the Harbour colony and other residences located inside the check gates.

(3). Conditions for issue of licences:

(i). Licences issued for a day shall be called temporary licence.

(ii). The payment of licence fee will not automatically entitle the owner of a vehicle / equipment for entering the zones.

(iii). No refund is permissible for the charges once paid and of the unexpired period of licence.

(iv). Whenever damage to the port's property is caused by any vehicle / equipment plying within the port premises, the owner of the vehicle / equipment shall accept liability thereof and pay the damages resulting there from and the port reserves the right to suspend the operation of the licence issued or the issue of the licence to the owner or agent of the vehicle / equipment until such damage is made good.

(v). The port reserves the right to refuse a licence or cancel a licence issued without assigning any reasons.

(4). 10% of actual cost is fixed as a penalty for late submission of application for renewal of Licence.

(5). The rates in respect of Sl.No.5 will be applicable for all other heavy duty equipment(s) not specified in the Schedule. Also the rates will be applicable for engaging private grabs.

(6). The Unit "Day" for Licence Fee the daily pass means 24 Hours from the time of entry.

**5.17. PASSENGER TOLL AND CHARGES FOR VARIOUS TYPES OF VEHICLES ACCOMPANYING PASSENGERS**

Sl. No.	Particulars	Unit	Rates (in `)
1.	Passenger Toll.		
	(i). For II and III class	Each	30.00
	(ii). For Deluxe cabin and I class.		53.00

2.	Charges for vehicles accompanying passengers.		
	(i). Motorcycles, scooters, mopeds, cycles fitted with motors and other powered two wheeled vehicles.	- do -	41.00
	(ii). Motor cars.	- do -	319.00
	(iii). Motor vehicles like tourist car, vans on wheels.	- do -	537.00
	(iv). Motor vehicles like buses, dumpers and lorries.	- do -	850.00

**Notes:**

- (1). The passenger toll shall be levied on all deck and cabin passengers disembarking and embarking at the Port.
- (2). Defence personnel other than civil staff moving on duty disembarking and embarking at the port shall be exempted from the payment of the passenger toll.

**5.18. ISSUE OF DUPLICATE COPY OF BILLS AND RECEIPTS, ETC.**

Sl. No.	Particulars	Unit	Rates (in ` )
1.	Issue of duplicate copy of bills and receipts etc.,	Each	50.00

**5.19. CHARGES FOR HIRE OF WOODEN LOGS TO SAILING VESSELS.**

Sl. No.	Particulars	Unit	Rates (in ` )
1.	Charges for hire of wooden logs to sailing vessels.	Per day	70.00

**5.20. CHARGES FOR USE OF HARBOUR MOBILE CRANES INSTALLED BY THE PRIVATE OPERATORS:**

- (I). For Dry Bulk Cargo

Average daily crane performance (in Metric Tonne)	Ceiling rate per tonne (in ` )	
	Foreign	Coastal
9500-10499	31.72	19.03
10500-11499	33.59	20.15
11500-12499	35.46	21.28
12500	37.33	22.40





12501-13500	39.20	23.52
13501-14500	41.07	24.64
14501 – 15500	42.94	25.76

**Note:** To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes and for the 2<sup>nd</sup> thousand tonnes the rate was enhanced to 110% of the base rate. The rate for third thousand tonnes was arrived by enhancing the base rate by 115%. The same methodology shall also be adopted to calculate the rate beyond 15500 tonnes. Likewise, ceiling rates for performance below 9500 tonnes shall be calculated by reducing the base rate accordingly.

(II). For Break-bulk cargo:

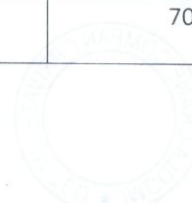
(A). Steel and Bagged Cargo

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in `)	
	Foreign	Coastal
5000-5999	73.91	44.35
6000	77.80	46.68
6001-7000	81.69	49.01

**Note:** To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 7000 tonnes. Likewise, ceiling rates for performance below 5000 tonnes shall be calculated by reducing the base rate accordingly.

(B). Others

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in `)	
	Foreign	Coastal
2750-3749	118.32	70.99



3750	124.55	74.73
3751-4750	130.78	78.47

**Note:** To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 4750 tonnes. Likewise, ceiling rates for performance below 2750 tonnes shall be calculated by reducing the base rate accordingly.

**Notes:**

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

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

- (ii). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.
- (iii). If one HMC works with another HMC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the HMC's load meter.
- (iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by HMC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (v). In case of stoppages of operation of HMC for more than two hours at a stretch for reasons not attributable to the HMC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of HMC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the HMC. All stoppages in loading / unloading operations during working of HMC are required to be certified by the Stevedore of the vessel in the daily vessel performance report.
- (vi). In case shifting of a vessel becomes necessary due to breakdown / non-performance of HMC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to a penalty of Rs.1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel's agent while the penalty will be retained by the port.



- (vii). In case of dispute on the average output, the decision of the port trust will be final and binding.

#### 5.21. CHARGES FOR RECOVERY OF OVERHEAD EXPENSES FOR SUPPLY OF ELECTRICITY BY PORT

Sl. No.	Particulars	Rates (in `)
1.	Charges for recovery of overhead expenses for supply of electricity by port	1.15 per unit of electricity consumed

### CHAPTER – VI

#### TUTICORIN PORT TRUST CARGO HANDLING LABOUR POOL LEVY

#### 6.1. LEVY FOR SUPPLY OF LABOUR FROM TUTICORIN PORT TRUST CARGO HANDLING LABOUR POOL (TPTCHLP) FOR CARGO HANDING OPERATIONS

Sl. No.	Description	Rate (in ` per metric tonne)
1.	<b>All cargoes other than Coal and Salt</b>	17.25
2.	<b>Coal at Jetty II</b>	10.45
3.	<b>Salt</b>	18.00
4.	<b>For container stuffing and destuffing operations</b>	@ 200% of Time Rate Wages
5.	<b>C&amp;F Operation at Transit Shed and Ware house etc. levy</b>	` 10/- Per metric tonne
6.	<b>For Zone 'B'</b>	` 10/- Per metric tonne

#### (e) PENSION FUND LEVY

Pension fund levy @ ` 9.00 per M.T. will be collected by the VOCPT to meet the shortfall in the Pension fund liability. The levy will automatically cease from 1 April 2013. The quantum of levy for the subsequent period will be determined on review at the end of this tariff cycle.

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## CHAPTER – VII

### RAILWAY SIDING CHARGES (As approved by the Ministry of Railways)

The undermentioned Charges will be levied for the use of the Port's Railway Siding from Milavittan to Harbour or for any shorter distance between these two points for the movement of goods for inter connected ship operation or for private use.

SL.NO (1)	PARTICULARS (2)	UNIT (3)	RATES IN RS. (4)
(i)	<b><u>For Shipping Operation**</u></b>		
	a. With Loco		19.40
	b. Without Loco		
	<u>Note:</u> - The Rate Includes the charges for shunting loco within the Port Area upto Marshalling Yard.	Per Metric Tonne	14.70
(ii)	<b><u>For Private Parties.**</u></b>	-do-	15.00
	<u>Note:</u> - The Siding Charges for the imported cargo which is taken outside the Security Wall for the purpose of storage in the warehouses belonging to the Tamil Nadu Warehousing Corporation, shall be levied at the rate applicable to Private Operation, if the cargo is moved by rail at later date.		

**Note:** - The Weight for this purpose will be the Weight on which freight is charged by the Railways.

Sl. No. (1)	Particulars (2)	Unit (3)	Rates in Rs. (4)
(iii)	<u>For Containers without Port Loco</u>		
(a)	For Empty Container of 20 feet	Per Container	48/-
(b)	For Empty Container above 20 feet	-do-	80/-
(c)	For Loaded Container of 20 feet	-do-	160/-
(d)	For Loaded Container above 20 feet	-do-	240/-
	<u>For Containers with Port Loco</u>		
(a)	For Empty Container of 20 feet	Per Container	63/-
(b)	For Empty Container above 20 feet	-do-	106/-



Sl. No. (1)	Particulars (2)	Unit (3)	Rates in Rs. (4)
(c)	For Loaded Container of 20 feet	-do-	211/-
(d)	For Loaded Container above 20 feet	-do-	317/-
(iv)	Ad-hoc Charges to be levied on M/s.Southern Petrochemical Industries Corporation Ltd., for using Port Marshalling Yard.**	Per Metric Tonne	7/-

As per Ministry of Railways' Order No.TCR/1055/98/1 dated 24.02.2010 the above change is published in the Tamil Nadu Government Gazette Notification No.VI-3(a)/23/2010 dated **24 March, 2010**.

Notes are as published in the Tamil Nadu Government Gazette Notification No.VI-3 (a)/223/90, dated 25.07.1990.

\*\*Rates are as published in the Tamil Nadu Government Gazette Notification No.VI-3(a)/311/2004 dated 29.9.2004)

As per the Ministry's order No.TCR/1055/96/1 dated 10/05/2006, the above change is published in the **Tamil Nadu** Government Gazette Notification No.VI-3(a)/80/2006 dated 14.06.2006)



## APPENDIX 14

### MINIMUM GUARANTEED AVAILABILITY PERCENTAGE

### AND MINIMUM GUARANTEE EFFICIENCY OF HARBOUR MOBILE CRANES

1. Concessionaire shall unconditionally guarantees the concessioning Authority the minimum guarantee availability of 90% per crane per month. The availability shall be calculated for each crane/ each month.
2. Concessionaire shall handle mimimug cargo as detailed below per day ( 24 Hrs of actual working) per crane or tonnage of proportionate hours of actual working.

For Dry Bulk Cargo - 12500 Metric tonnes(average)/per day per crane

For Break Bulk Cargo

Steel and Bagged Cargo - 6000 Metric tonnes(average)/per day per crane

Others - 3750 Metric tonnes(average)/per day per crane

3. Penalty if Minimum Guaranteed Availability is not achieved

Since the hire of crane is based on tonnage, 25% of revenue share applicable to shortfall in working hours below 90% multiplied by normative tonnage (lowest tonnage among various cargo groups) and multiplied by the rate applicable for normative tonnage under the head "Foreign" will be collected as penalty.

Penalty if the Minimum Guaranteed Efficiency is not achieved

Penalty will be levied for the short fall in the Minimum Guaranteed Efficiency at a rate of 25% of the revenue share corresponding to the short fall in the tonnage multiplied by the rate applicable for normative tonnage under the head "Foreign"

**Note :** i) The Minimum Guaranteed Availability of Harbour mobile cranes andMimumum Guaranteed Efficiency will be monitored by Traffic Department of V.O.Chidambarabar Port Trust

ii) The short fall in availability and efficiency will be attested by Port's Traffic Department Officials and concessionaire's representative daily.





## APPENDIX 15

### PERFORMANCE STANDARDS

[This Appendix will prescribe project-specific minimum Performance Standards. The Performance Standards prescribed in this Appendix will assess productivity of the terminal/berth etc. as also the manner in which the assessment of compliance/shortfall in compliance will be made. The Performance Standards given below are indicative. Ports will have to develop Performance Standards for each specific project. These Performance Standards can be drawn from the specific design parameters as prescribed in the feasibility report and circulated to the selected bidders as well as the operational requirements and will be firmed up at the RFP stage for each project. Further, the dynamics in handling of export and import cargoes being different, distinction in the Performance Standards between import and export cargoes should be made. The guidelines for formulating the Performance Standards along with the indicative standards and norms are given below which may be customized as per the requirements of the Project. Weightages in case of shortfall in meeting the prescribed minimum standards in respect of each of the performance standards shall be assigned by the Concessioning Authority keeping in view the project-specific operational requirements.]

#### Performance Standards

##### **1 Gross Berth Output**

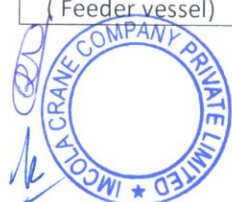
The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of cargo. In case of dry and break-bulk cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity.

The Gross Berth Output shall be calculated as the total cargo handled (either loaded/unloaded) from the ship during a month divided by the time spent by the ship at the terminal number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of [●] hours shall be subtracted from the total hours.

In the case of containers the crane rate shall be measured by dividing total number of TEUs lifted on/off from ships by the elapsed crane time. The elapsed crane time is the total allocated crane hours less operational and non-operational delays.

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

Cargo Category	Indicative Norms
<b>Container</b>	
(Main line vessel)	[25 moves per hour]
(Feeder vessel)	[17 moves per hour]



<b>Iron ore- Import/Export(Mechanized)</b>	
For terminals capable of handling more than 100,000MT parcel size	[60,000T/day]
For terminals capable of handling less than 100,000MT parcel size.	
a) 65,000-100,000	[30,000T/day]
b) 30,000- 65,000	[20,000T/day]
c)< 30,000	[10,000T/day]
<b>Coking coal-Import(Mechanised)</b>	
For terminals capable of handling more than 100,000 MT parcel size	[50,000T/day]
For terminals capable of handling between 65,000 MT-100,000MT parcel size.	[40,000T/day]
For terminals capable of handling between [30,000T/day] 30,000MT-65,000MT parcel size.	[30,000T/day]
For terminals capable of handling less than 30,000MT parcel size	[15,000T/day]
<b>Thermal coal – Import / Export (Mechanized)</b>	
For terminals capable of handling more than 100,000 MT parcel size.	[50,000T/day]
For terminals capable of handling more than 65,000 MT parcel size.	[45,000 T/day]
For terminals capable of handling between 30,000- 65,000 MT parcel size	[30,000T/day]
For terminals capable of handling less than [10,000T/day] 30,000MT parcel size.	[10,000T/day]
<b>Non-coking coal - Import (Mechanized)</b>	
For terminals capable of handling more than 100,000 MT parcel size	[40,000T/day]
For terminals capable of handling more than 65,000MT parcel size.	[30,000T/day]
For terminals capable of handling between 30,000MT- 65,000MT parcel size.	[25,000T/day]
For terminals capable of handling less than 30,000MT parcel size	[10,000T/day]
<b>Coke – Import</b>	
For terminals capable of handling more than 30,000MT parcel size.	[10,000T/day]



For terminals capable of handling less than 30,000MT parcel size	[7,000T/day]
<b>Mixed Dry bulk cargo (Fertilizer and Food grains)</b>	
For terminals capable of handling more than 30,000MT parcel size.	[12,500 T/day]
For terminals capable of handling up to 30,000 MT parcel size.	[7,500 T/day]
<b>Mixed dry bulk cargo terminal handling B.F slag, Field spar, Limonite sand etc.</b>	[7,500T/day]
<b>Break Bulk</b>	
Steel and bagged cargo	[4000T/day]
Others	[2500T/day]
<b>Liquid Bulk</b>	
Crude	[5000T/H]
POL Products	
White	[1000T/H]
Black	[7000T/H]
LPG/LNG	[400T/H]
Other Liquids	[250T/H]

Weightage in case of a shortfall in meeting the prescribed performance standard - [●]

## 2. Transit Storage Dwell Time:

### (a) Containers:

The Transit Storage Dwell Time for a container shall mean the total time for which the container remains in the terminal. The Transit Storage Dwell Time for containers shall be calculated as an average and shall be the sum of the transit storage of each container handled during the month at that terminal divided by the number of containers. To further clarify, the date and time a container is discharged from the vessel till the said container leaves the out - gate of the Terminal, is the total transit storage time for import box. In case of export the time and date from which the container enters the terminal till the time and date it is loaded on to a vessel will be the storage time. The details of time of discharge, gate-in, gate-out and loading need to be maintained in respect of each container including ICD containers. Unclaimed cargo or any cargo that has been detained by the customs or any Government Authority may be excluded.

### (b) Bulk Cargo:

The Transit Storage Dwell Time for coal/coke/mixed dry bulk cargo/liquid cargo shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

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

OB = Opening Balance, CB = Closing Balance.





Average Parcel Sizes (B) =  $\frac{P1+P2+ \dots + Pn}{n}$

n(no. of parcels)

P1,P2 .....Pn are parcel size of each vessel in a month.

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

**(c) Break-bulk cargo:**

The Transit Storage Dwell Time of Break Bulk cargo shall be calculated in the same manner as calculated for container in the terminal. The Transit Storage Dwell Time for Break Bulk Cargo is the sum of time of each unit of cargo that remains in the Port in a month divided by the number of cargo units handled during that month in the terminal. To further clarify, the time the break bulk cargo remains in the port will commence from the date and time of landing till the date and time of exit from the Port in case of import and for export from the date and time the cargo entered the Port area till the date and time of the shipment.

Transit Stroage Dwell Time	
<b>Import</b> a) Container(at terminal) b) Coal/Coke and other dry bulk cargo(at stack yard) c) Break bulk (at stack yard)	[5days] [30 days after date of completion of vessel's discharge operation] [10 days after date of completion of vessel's discharge operatin]
<b>Export</b> a) Container ( at terminal) b) Iron ore & other dry bulk cargo (at stackyard) c) Break bulk cargo	[3 days] [20 days upto commencement of ship loading operation] [10 days upto commencement of ship loading operation]

Weightage in case of a shortfall in meeting the prescribed performance standard - [●]

**3. Turn around Time for receipt/delivery operation:**



The Turn around Time for receipt/delivery operation shall be the sum of time taken for loading/unloading of cargo divided by the number of trucks/trailers/rakes deployed, as the case may be, in a month. Further, in case the truck/trailer/rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those trucks/trailers/rakes.

a. (i) Truck for conventional cargo( single operation)	[4 hours]
(ii) Truck for conventional cargo(Double operation)	[8 hours]
b. (i) Trailer for container (single operation)	[2 hours]
(ii)Trailer for container(double operation)	[4 hours]
c. (i)Rake for ICD container( Single operation)	[6 hours]
(ii)Rake for ICD container (Double operation)	[12 hours]
d. (i) Rake for dry bulk cargo (Single operation)	[10 hours]
(ii) Rake for dry bulk cargo(Double operation)	[18 hours]

Weightage in case of a shortfall in meeting the prescribed performance standard - [●]

#### Performance Evaluation and calculation of liquidated damages:

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

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



## APPENDIX 16

### ESCROW AGREEMENT

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

#### AMONGST

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

#### WHEREAS:

- (A) The 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;

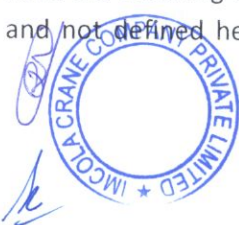
**"Payment Date"** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

**"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 Concessions 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 Concessions Authority, the Lenders, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessions 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 Concessions 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 Concessions Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

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

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

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this





Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

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

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

## 2.4 Escrow Bank's fee

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

## 2.5 Rights of the parties

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

## 2.6 Substitution of the Concessionaire

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

# 3. DEPOSITS INTO ESCROW ACCOUNT

## 3.1 Deposits by the Concessionaire

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

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





- to the Concessionaire including termination payments; and
- (e) all proceeds received pursuant to any insurance claims.

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

#### 4. WITHDRAWALS FROM ESCROW ACCOUNT

##### 4.1 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire;
- (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:

- (j) 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 Concessioneing Authority.

### 5. OBLIGATIONS OF THE ESCROW BANK

#### 5.1 Segregation of funds

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





## 5.2 Notification of balances

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

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

## 5.3 Communications and notices

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

(a) may, in the absence of bad faith or gross negligence on its part, 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 Concessions 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 Concessions 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 Concessions 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 Concessions 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 Chennai shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 10.2 Waiver of sovereign immunity

The Concessioneing Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessioneing Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).





### 10.3 Priority of agreements

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

### 10.4 Alteration of terms

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

### 10.5 Waiver

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

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

(b) shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### 10.6 No third party beneficiaries

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

### 10.7 Survival

#### 10.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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



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

#### 10.8 Severability

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

#### 10.9 Successors and assigns

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

#### 10.10 Notices

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

The Concessioneing Authority:

CHAIRMAN

-----PORT

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Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

The Concessionaire:

The MANAGING DIRECTOR

-----Ltd

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Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

The Lenders/Lenders representative:

-----Ltd



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Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

The Escrow Bank:

-----Ltd

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Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

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

#### 10.11 Language

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

#### 10.12 Authorised representatives

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

#### 10.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)





(Fax No.)

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

1.

2.

