श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
Formerly Kolkata Port Trust

REQUEST FOR QUALIFICATION CUM REQUEST FOR PROPOSAL

DEVELOPMENT OF CONCRETE JETTY AND OTHER FACILITIES FOR LIQUID CARGO HANDLING AT BUDGE BUDGE, SYAMA PRASAD MOOKERJEE PORT, KOLKATA ON DBFOT BASIS THROUGH PPP MODE

SMPK/KDS/CIV/T/BB-PPP/3023/96, Dated 30.01.2026

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(TENDER NO. SMPK/KDS/CIV/T/BB-PPP/3023/96, Dated 30.01.2026)

NATIONAL INVITATION OF REQUEST FOR QUALIFICATION CUM PROPOSAL FOR SELECTION OF PRIVATE DEVELOPER FOR THE PROJECT DEVELOPMENT OF CONCRETE JETTY AND OTHER FACILITIES FOR LIQUID CARGO HANDLING AT BUDGE BUDGE, SYAMA PRASAD MOOKERJEE PORT, KOLKATA ON DBFOT BASIS THROUGH PPP MODE

Syama Prasad Mookerjee Port, Kolkata (SMPK) invites application from interested parties (Applicants) in accordance with the Request for Qualification cum Proposal (RFQ cum Proposal) document in order to shortlist competent Applicants, subject to national security clearance, who may be subsequently invited to bid for the project.

RFQ cum RFP document containing instructions to Applicants and Criteria for Evaluation may be obtained on payment of Rs. 11,800/- (Rupees Eleven Thousand Eight Hundred only) including GST through RTGS / NEFT / Bank Transfer/Demand Draft etc. on any working day between 1000 hrs to 1700 hrs from 30.01.2026 to 26.03.2026 from Office of The Chief Engineer, Syama Prasad Mookerjee Port,Kolkata, #6, Fairley Place, BBD Bag, Strand Road, Kolkata-700001

The details of Bank account to which amount is to be transferred are furnished below:
Name of the Beneficiary: Syama Prasad Mookerjee Port Authority, Kolkata
Bank Name: Indian Overseas Bank
Bank Branch: Strand Road Branch
Branch Account No: 067502000000491
IFSC Code: IOBA0000675

The Applicants shall upload the copy of the transaction details with the details of UTR No. along with the Technical bid documents for having remitted the tender fee, without which the Application shall be summarily rejected. SMPK shall not be liable / responsible for any connectivity / internet problem either with the user side / NIC / Bank. It is in the own interest of the Applicants, Applicants may get it verified from Bank that the requisite money has been received by SMPK for the NIT in which they are participating.

Pre-Application Conference is scheduled on 18.02.2026 at 1600 hrs.
The RFQ cum RFP document can also be downloaded from the https://eprocure.gov.in/eprocure/app portal such Applicants shall submit the cost of the document in the manner specified in the document on or before Pre-Application Conference, for those who are attending Pre- Application Conference, or on or before Application Due Date.

The downloading of RFQ cum RFP is permitted up to Application Due Date. No editing/ addition / deletion of the downloaded document shall be permitted. If such incident is observed at any stage, such Applications shall be liable for outright rejection.
The completed Application in the required format containing all information requested in RFQ document should be submitted Online before application due date.

***Note**: In case RFQ* cum RFP *document is downloaded from* https://eprocure.gov.in/eprocure/app *Portal, the Applicant is responsible to download Addendums / Amendments / Reply to Queries etc. if any issued by the Port.*

DISCLAIMER

1 The information contained in this Request for Qualification cum Request for Proposal document (the "RFQ cum RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFQ cum RFP and such other terms and conditions subject to which such information is provided.

2 This RFQ cum RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFQ cum RFP is to provide interested parties with information that may be useful to them in the formulation of their application for qualification and making their financial offers (Bids) pursuant to this RFQ cum RFP. This RFQ cum RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFQ cum RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ cum RFP. The assumptions, assessments, statements, data and information furnished in this RFQ cum RFP or to be furnished later under the bidding documents, by the Authority are, only indicative and for the sole purpose of making available to interested parties/bidders" information that may be useful to them in the formulation of their Bid. Such assumptions, assessments, statements and information contained in the Bidding Documents, especially the Project Information Memorandum& Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, before placing reliance on aforesaid assumptions, assessments, statements, data and information furnished in this RFQ cum RFP or referred to herein, by the Authority conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ cum RFP and obtain independent advice from appropriate sources. For avoidance of doubt, in case Bidder places reliance on any aforesaid assumptions, assessments, statements, data and information furnished by the Authority in this RFQ cum RFP or referred to herein, then the same shall not in any manner bind/make liable the Authority, to indemnify the Bidder in respect of any loss/damage/costs whatsoever arising out of or in connection with such reliance placed by the Bidder on the aforesaid assumptions, assessments, statements, data and information.

3 Information provided in this RFQ cum RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

4 The Authority , its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred

or suffered on account of anything contained in this RFQ cum RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ cum RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ cum RFP or arising there from in any way for participation in this Bid Stage.

5 The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFQ cum RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ cum RFP.

6 The issue of this RFQ cum RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

7 The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

8 The Bidders are prohibited from any form of collusion or arrangement in an attempt to influence the selection and award process of the Bid. Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the Bidder towards any officer/employee/ advisor/ representative of Authority or to any other person in a position to influence the decision of the Authority for showing any favour in relation to this RFQ cum RFP or any other contract, shall render the Bidder to such liability/penalty as the Authority may deem proper, including but not limited to rejection of the Bid of the Bidder and forfeiture of its Bid Security.

9 Laws of the Republic of India are applicable to this RFQ cum RFP.

10 The RFQ cum RFP is solely for the implementation of the Project to be undertaken in accordance with this RFQ cum RFP on the Project Site, the owner of which is and shall always be Authority and the land shall always be deemed to be in the actual exclusive possession of Authority. The Selected Bidder shall only make use of the land to implement the Project and the land on which the proposed Project is to be undertaken shall in no way be deemed to be transferred by any mode to the Selected Bidder. Any attempt to transfer the land by any mode shall be treated as malfeasance and in that event the Concession Agreement shall be terminated forthwith without any notice and reason and Authority shall resume the land together with all structures and forfeit the Bid Security/ Performance Guarantee without any prejudice to any action taken as per law.

GLOSSARY

Associate	As defined in Clause 2.1.19
Bank Guarantee	As defined in Clause 2.23.1
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Validity Period	As defined in Clause 1.3
Concession	As defined in Clause 1.1.5
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1.(c)
DBFOT	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.23.2
Estimated Project Cost	As defined in Clause 1.1.4
Eligible Experience	As defined in Clause 3.4.1
Feasibility Report	As defined in Clause 1.2.3
Financial Bid	As defined in Clause 1.2.1
Government	Government of India
Highest Bidder	As defined in Clause 1.2.1
LOA	As defined in Clause 3.8.5
Lead Member	As defined in Clause 2.1.16.c
Member	Member of a Consortium
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Project Sponsoring Authority	As defined in 1.1.1
Premium	As defined in Clause 1.2.6
Re. or Rs. or INR	Indian Rupee
RFQ cum RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 1.2.6
SPV	As defined in Clause 2.1.16
Technical Bid	As defined in Clause 1.2.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

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

PROJECT INFORMATION MEMORANDUM[3]

S.No	Project Parameters	Details
1.	Project Title	Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode
2.	Location	Kolkata Dock System
3.	Authority	Syama Prasad Mookerjee Port Authority, Kolkata
4.	Project Site Area	Budge Budge, Kolkata
5.	Proposed Project Components	Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode as per the definition of "Project" provided in Clause 1.1.1 hereinafter. The Project envisages the development of a Concrete Jetty and associated facilities for liquid cargo handling at Budge Budge. The proposed liquid cargo jetty is intended to handle POL products, edible oils, chemicals, and other liquid cargo, with the objective of enhancing the handling capacity from the existing 1.125 MTPA to the planned capacity, as more particularly described in the Draft Concession Agreement, a copy of which is annexed as an Annexure to this RFQ-cum-RFP.
6.	Minimum Development Obligations (MDOs)* if any	Obligations include construction, operation and maintenance of the Project Assets till the end of the Concession Period as per the terms of the Concession Agreement (hereinafter defined)
7.	Estimated Project Cost (in Crore)	92.60 Cr.
8.	Development Guidelines	As per draft Concession Agreement
9.	Institutional Structure for Implementation	Special Purpose Vehicle (Concessionaire SPV) to be incorporated by the Selected Bidder.
10.	Project Implementation Structure	DBFOT
11.	Consortium Provisions	Refer Clause 2.1.16 of RFQ cum RFP
12.	Term of the Agreement	30 years Concession Period which includes construction period of 24 months.
13.	Construction Period (*Mention details of Phases if applicable)	24 month single Phase
14	**APPOINTED DATE**	180 Days of the date of execution of the Concession Agreement.
15	**BID SECURITY**	Rs. 92,60,000/- in the form of an irrevocable, unconditional bank guarantee in favour of SYAMA PRASAD MOOKERJEE PORT AUTHORITY, KOLKATA issued by a scheduled bank in India or a

		foreign bank having a branch in India and acceptable to the Government of India, or by way of a demand draft in favour of SYAMA PRASAD MOOKERJEE PORT, KOLKATA and payable at Kolkata and payable in Indian rupees.
16	**BIDDING PARAMETER**	Royalty per MT excluding GST
17	**PRE-BID MEETING**	**18.02.2026**
18	**PROJECT KPI, IF ANY**	**AS PER APPENDIX- 17**
19	**EQUITY LOCK IN PERIOD**	1 (one) year from the Commercial Operation Date
20	**BID DUE DATE**	**26.03.2026**

SECTION-1-INTRODUCTION

Name of the Project Implementing Agency

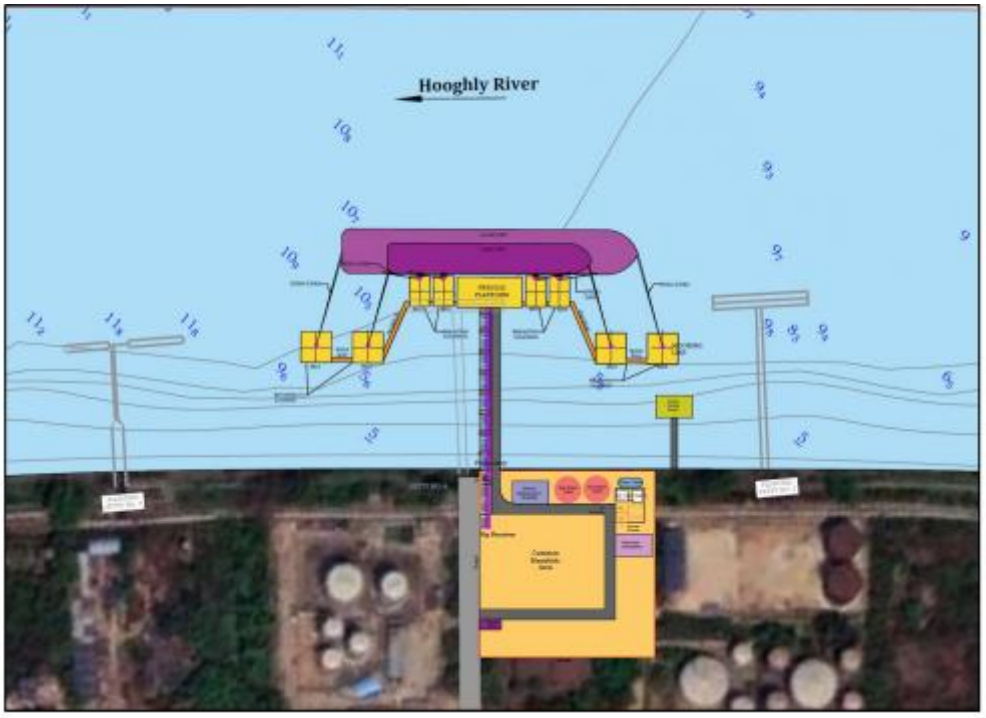
1.1. Background[4]

Port of Kolkata, the first Major Port in India, is a riverine port. It serves a vast hinterland comprising the States of West Bengal, Bihar, Uttar Pradesh, Madhya Pradesh, Punjab, Haryana, Rajasthan, Assam, other North Eastern States and the two neighboring landlocked countries viz. Nepal and Bhutan. The Port has two Docks viz. Kidderpore Dock (KPD) and Netaji Subhas Dock (NSD). Kidderpore Dock (KPD) is the older one with 17 Multi-purpose berths and 1 berth for passenger-cum-cargo vessels, 6 Buoys / Moorings and 3 Dry Docks while Netaji Subhas Dock (NSD) is a relatively new one with 1 heavy lift berth, 10 berths including 4 dedicated Container Berths, 1 Liquid Cargo Berth, 4 multi-purpose berths, 2 Buoys / Moorings and 2 Dry Docks. Both the docks of Syama Prasad Mookerjee Port, Kolkata (formally known as Kolkata Port Trust) (SMPK) ("the Authority") operate under lock gate system. The Kolkata Dock System (KDS) is situated at Latitude 22º 32' N, Longitude: 88º 18' E in the city of Kolkata.

Currently, to cater to the liquid cargo demand of the Kolkata region and hinterland, the liquid cargo is handled by KDS through Budge Budge location. Conventional floating pontoon jetty with mooring buoy system is used as berthing structure. The loading / unloading operations are done through conventional hoses. The current berth occupancy is less than 25% due to various technical limitations of the present berthing structure. KDS and the stakeholders are under the opinion that, with the better berthing structure (which can serve in all weather conditions) and loading / unloading system, there could be improvement in the cargo throughput, reduction in the ship waiting time, stakeholders preferring to bring larger parcel sizes etc. leading to win-win situation for KDS and stakeholders. Further, considerable economic benefits are also envisaged. Hence, Construction of Concrete Jetty for Liquid Cargo Handling at Budge Budge, Kolkata is bring proposed Brief particulars of the Project are as follows::

S.No	Name of Project	Scope of Project	Estimated Project Cost (In Rs. Cr.)
1.	Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode	1.125MTPA	Rs.92.60

1.1.1 The Selected Bidder undertakes to incorporate a special purpose vehicle (a company to be incorporated under the Companies Act, 2013 and its amendment from time to time) prior to execution of the concession agreement (the "**Concessionaire"**). The concession agreement (the "**Concession Agreement**") shall be entered into between the company incorporated by the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.



1.1.2 The scope of work will broadly include designing, building berth and equipping Berth for the operation and maintenance thereof. Post signing the concession agreement and hand over of the site, shall initiate the work with detail designs and establishment of temporary facilities at Project site. The main components for construction of concrete jetty for liquid cargo handling at Budge Budge comprises of construction of jetties & approach trestles, procurement of equipment for cargo handling, development of common manifold area, development of admin, operational buildings, development of other utilities and firefighting facilities as required and The scope broadly includes the design, engineering, construction, equipping, operation, and maintenance of the liquid cargo berth and related infrastructure. The Project is intended to handle POL products, edible oils, chemicals, and other liquid cargo, and aims to augment the existing handling capacity through the creation of a modern, efficient, and all-weather liquid cargo handling facility.

1.1.3 The estimated cost of the Project (the **"Estimated Project Cost"**) has been specified in the Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.4 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").

1.1.5 The statements and explanations contained in this RFQ cum RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFQ cum RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFQ cum RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFQ cum RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.1.6 The Authority shall receive Bids pursuant to and in accordance with the terms set forth in this RFQ cum RFP and other documents to be provided by the Authority pursuant to this RFQ cum RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 of Section 1 of this RFQ cum RFP for submission of Bids (the "**Bid Due Date**").

1.2. Brief description of Bidding Process

1.2.1 The Authority has adopted a single stage two envelop process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project using e-procurement process. Under this process, the Bid shall be invited under two envelops. Prior to the Bid, the Bidder shall pay to the Authority a sum of Rs. 11,800/- (Rupees Eleven Thousand Eight Hundred only) including GST as the cost of the tender transmitted online to Authority as per the details mentioned below and submit a proof of payment along with the Technical Bid.
(The "**Bidder"**, which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted under First Envelop ("**Technical Bid**") with respect to eligibility and qualifications criteria prescribed in this RFQ cum RFP. The Financial bid under the Second Envelop ("**Financial Bid**") shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFQ cum RFP.

The details of Authority Account for depositing of the cost of tender fee online is given below:

Particulars	**Details**
Beneficiary	SYAMA PRASAD MOOKERJEE PORT AUTHORITY, KOLKATA
Bank	Indian Overseas Bank, Strand Road Branch
Account Number	067502000000491
IFSC Code	IOBA0000675

1.2.2 Interested bidders (the "**Bidders**") are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 180 days from the date specified in Clause 1.3 of this Section for submission of Bids.

1.2.3 The complete Bidding Documents include the draft Concession Agreement for the Project which is enclosed. The Techno Economic Feasibility Report prepared by the Authority consultants of the Authority (the **"TEFR"**) will be provided. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFQ cum RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of Rs. 92,60,000/- (Ninety Two Lakhs Sixty Thousands only) (the "**Bid Security**"), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority, and in such event, the validity period of the bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time and that the validity of the demand draft shall not be less than 80 (eighty) days from the Bid Due Date.. The Bid shall be summarily rejected if it is not accompanied by the Bid

Security.

1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies and investigations as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.2.6 Bids are invited for the Project on the basis of Highest Royalty per MT of Liquid Cargo handled at the Project Facilities and Services (the "Royalty") . The rate of the Royalty will be indexed to as per the variations in the Wholesale Price Index (WPI) for all commodities announced by the Government of India annually as specified in the draft Concession Agreement.

In this RFQ Cum RFP, the term "Highest Bidder" shall mean the Bidder who is offering the Highest Royalty per MT excluding GST of Liquid Cargo handled at the Project Facilities and Services (the "Royalty") excluding GST. The Concession period and other terms are pre-determined, as indicated in the draft Concession Agreement, and the "Royalty" shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 3, the Project will be awarded to the Highest Bidder.

Authority Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFQ Cum RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid. Further, other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFQ cum RFP.

1.2.8 Any queries or request for additional information concerning this RFQ cum RFP shall be submitted by e-mail to the officer designated in Clause 2.12.4 of Section 2 of this RFQ cum RFP with identification/ title:

"Queries/Request for Additional Information:

RFQ cum RFP for "**Development of Concrete Jetties and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode''**

1.2.9 The Concessionaire shall in consideration of its investment and services be entitled to levy and collect a user fee as per Market as per Tariff Guidelines of F-PD-13/66/2020-PPP (Part-2/e-347563 dated. 21st December 2021 of Ministry of Port Shipping and Waterways or any revision by MoPSW from time to time.

1.3. Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date
1.	Invitation of RFQ cum RFP	From 30.01.2026
	Site visit (Budge Budge)	11:00 hrs on 18.02.2026
2.	Pre-Bid meeting at venue mentioned at Clause 2.12.4	16:00 hrs on 18.02.2026

3.	Last date for receiving queries	17:00 hrs on 19.02.2026
4.	Authority response to queries latest by	17:00 hrs on 05.03.2026
5.	Bid Due Date	15:00 hrs on 26.03.2026
6.	Opening of Technical BIDs	15:30 hrs on 27.03.2026
7.	Declaration of eligible / qualified Bidders	Will be informed
8.	Opening of Financial BID	Will be informed
9.	Physical Submission of originals Bid Securing Declaration, POA for signing the Bid, POA for lead member of JV, if any, JBA for JV, if any, Integrity Pact, and experience certificates apostille at foreign origin, if any.	Within 05 (five) days of Bid due Date
10.	Validity of Bid ("**Bid Validity Period**")	**180** Days from Bid Due Date
11.	Signing of Concession Agreement	Within 45 Days of the award of LOA

Clarification:

(1) The above schedule is tentative. The Authority reserves the right to modify the said schedule of Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever. Such change, if any, would be uploaded at the website of the Authority from time to time.

(2) Further the Authority reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the above schedule shall stand modified and amended.

SECTION-2- INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

2.1.1 The Bidder may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be. A Bidder may be a natural person, private entity, government owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.16 of Section 2 of this RFQ cum RFP.

2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalized /apostilled by appropriate Authority notarized in the jurisdiction where the Power of Attorney is being issued and requirements under the Indian Stamp Act, 1899 are duly fulfilled. Further:

I. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure 1 of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure, Public Procurement Division vide F. No. 6/18/2019- PPD, dated 23rd July 2020¥, which shall form an integral part of RFQ cum RFP and DCA (Copy enclosed) or as notified by Government from time to time.

II. "Bidder" (including the terms "tendered", or "service provider" in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder from a country which shares a land border with India" means:

a. An entity incorporated, established or registered in such a country, or
b. A subsidiary of an entity incorporated, established or registered in such a country; or
c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
d. An entity whose beneficial owner is situated in such a country; or
e. An Indian (or other) agent of such an entity; or
f. A natural person who is a citizen of such a country; or
g. A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

IV. Beneficial owner for the purpose of (III) above means:

In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

Explanation:

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements.
c. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership.
d. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual.
e. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
f. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. The Selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority . The definition of "contractor from a country which shares a land border with India" shall be as in Clause III above.

Certificate regarding Compliance:

A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix-VII.

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

Validity of Registration:

In respect of RFQ cum RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

2.1.3 The Feasibility Report of the Project are being provided only as a preliminary reference by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report.

2.1.4 Notwithstanding anything to the contrary contained in this RFQ cum RFP, the detailed terms specified in the Concession Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder Clause 2.1 of this RFQ cum RFP shall continue to have effect in addition to its obligations under the Concession Agreement.

2.1.5 The Bid shall be furnished in the format prescribed in the RFQ cum RFP. The Technical Bid shall be as per Appendix IA and the Financial Bid shall be as per Appendix IB of the RFQ cum RFP. Financial Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in prescribed format of Financial Bid and shall be signed by the Bidder"s authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.6 The Bid shall consist of rate of Royalty in INR per MT of Cargo excluding Applicable Taxes handled at the Project Facilities and services to be quoted by the Bidder. The Royalty shall be payable by the Concessionaire to the Authority as per the terms and conditions of this RFQ cum RFP and the provisions of the Concession Agreement.

2.1.7 The Bidder shall deposit a Bid Security of Rs. 92,60,000/- (Ninety Two Lakhs Sixty Thousand only) in accordance with the provisions of this RFQ cum RFP. The Bidder shall submit the Bid Security in favour of 'Syama Prasad Mookerjee Port, Kolkata and payable at Kolkata or in the form of a Demand Draft or in the form of a Bank Guarantee (including e-Bank Guarantee) acceptable to the Authority as per the format at Appendix-.II The Bidders shall also make online payment towards cost tender fee as mentioned in clause 1.2.1 to be transmitted online to Authority and furnish a proof of payment along with the Technical Bid.

2.1.8 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (Sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 180 (one hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder, whose Bid Security shall be retained till the Selected Bidder has provided the Performance Security under the Concession Agreement.

2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to commit the Bidder.

2.1.10 Subject to the provision of Clause 2.1.16 of Section 2 of this RFQ cum RFP, in case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at Appendix — IV. In case the Bidder is a Consortium, Joint Bidding Agreement in the format of Appendix V shall be submitted by the Bidder.

2.1.11 The Bidders to specifically take note that as mentioned under Clause 1.2.7 in section-1 of this RFQ cum RFP, in case any condition or qualification or any other stipulation contained in the Bid the same shall render the Bid liable to rejection as a non-responsive Bid.

2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.13 The Bidding Documents including this RFQ cum RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.14 This RFQ cum RFP is not transferable.

2.1.15 Any award of Project pursuant to this RFQ cum RFP shall be subject to the terms of Bidding Documents.

2.1.16 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the **"Concessionaire SPV"**), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming a Concessionaire SPV, comply with the following additional requirements:

a. Number of members in a Consortium shall not exceed 4 (four). However, none of the members in a Consortium should be under any sort of ineligibility under the Bidding Documents and the information sought in the Bid should be in the order of their equity contribution.
b. the Bid should contain the information required for each member of the Consortium.
c. members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the Concessionaire SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III and Appendix-IV, signed by all the other members of the Consortium.
d. the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations (if any).
e. an individual Bidder cannot at the same time be member of a Consortium applying for RFQ CUM RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFQ cum RFP.
f. the members of a Consortium shall form an appropriate Concessionaire SPV to execute the Project, if awarded to the Consortium.
g. members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the "**Joint. Bidding Agreement**"), for the purpose of submitting a Bid. The Joint. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
    i. convey the intent to form a Concessionaire SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFQ cum RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium.
    ii. clearly outline the proposed roles and responsibilities, if any, of each member.
    iii. commit the minimum equity stake to be held by each member.
    iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFQ cum RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the Concessionaire SPV and shall further commit that each such member shall, for a period commencing from the date of incorporation of the Concessionaire SPV up to 1 (One) year from the date of commercial operation of the Project, individually hold equity share capital not less than (i)26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV(ii) 5% of the Project Cost;
    v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid-up equity of the Concessionaire SPV at all times until up to 1 (One) year from the commercial operation date of the Project; and
    vi. Lead Member of the Consortium (Original or new as the Case may be) legally and

beneficially holds at any time not less than 50% of the Consortium's holding in the paid up equity capital of the Concessionaire.

vii. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement.

2.1.17 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (DBFOT or otherwise), and the bar subsists as on the Bid due date, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.1.18 A Bidder including any Consortium Member or Associate thereof should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

Authority would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid. Any misrepresentation or concealment of any information in this regard shall render the Bid liable for outright rejection at the sole discretion of the Authority.

2.1.19 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2 and 3.4 of this RFQ cum RFP, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder of this RFQ cum RFP.

For the purposes of this RFQ cum RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the **"Associate"**). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

The Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be in the format given in Appendix IA.

2.1.20 The following conditions shall be adhered to while submitting a Bid:

(a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

(b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

(c) in responding to the RFQ cum RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 of Section 3 of this RFQ cum RFP; and

(d) in case the Bidder is a Consortium, each Member should substantially satisfy the

RFQ cum RFP requirements to the extent specified herein.

2.1.21 While Qualification is open to persons from any country, the following provisions shall apply:

(a) Where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid-up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or

(b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid-up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the eligibility and/ or opening of Financial Bid and/or award of the Project to such Bidder shall, in addition to the requirements of Clause 2.1.2 above (as applicable), be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.1.22 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three (03) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years for Aggregate Technical Capacity purpose or 1 (one) year for Net Worth purpose, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2. Eligibility and qualification requirements of Bidder

2.2.1 For determining the eligibility of Bidder, the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing

agreement to form a Consortium.

(c) A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate 5% of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority , including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise**.** Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25%(twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary;

or

(ii) a constituent of such Bidder is also a constituent of another Bidder.

or

(iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof;

or

(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder;

or

(v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other"s information about, or to influence the Bid of either or each other.

or

(vi) such Bidder or any Associate thereof has participated as a consultant to

the Authority in the preparation of any documents, design or technical specifications of the Project.

(vii) Such Bidder or any Associate thereof has appointed any official of the Authority, Technical Advisors of Authority or the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 6 months from the date of award of the Project to that Bidder

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1 above, shall include each Member of such Consortium.
For the purposes of this RFQ cum RFP, the term Associate in relation to the Bidder/Consortium shall have the meaning as ascribed under Clause 2.1.19 of Section 2 of this RFQ cum RFP.

(d) A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority , including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFQ cum RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Provided, in case the Authority seeks information / clarification from a Bidders related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority shall disqualify the Bidders, encash its Bid Security as per provision of Clause 2.23.vii of Section 2 of this RFQ cum RFP (a) and further debar it from participation in any future procurement process of Authority for a minimum period of One (1) year from the Bid Due Date of this work.

(e) Other eligibility conditions shall include Prevention of private Sector monopoly in Major Ports and shall be judged as per "Policy for preventing private sector monopoly in Major Ports" issued by Ministry of Shipping, Government of India vide Memo No. PD-24018/8/2009-PD.III dated 2nd August, 2010. A copy of this Memo No PD-24018/8/2009-PD.III dated 2nd August, 2010 is at Appendix VIII.

If the Bidder has submitted any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), power of attorney(s), undertaking(s), documentary evidence(s), qualifying document(s), etc. (collectively "**Foreign Documents**") then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/ embossed/ legalized/ notarized from the Indian Embassy/Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/ embossment/ legalization/ notarisation from the Indian

Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/ authorized /qualified Translator, supported by the affidavit of the said translator, certifying the correctness of the English translation. In case of any inconsistency between the original Foreign Document and its English translation, the latter shall prevail and be held binding on such Bidder.

However, in the case of Foreign Document(s) created or originating from countries that have signed, ratified and have made operational the Hague Convention abolishing the requirement of legalization for foreign public documents, 5 October 1961 - "**Hague Legalization Convention, 1961**", the Bidders may affix an "Apostille" sticker on each and every page of their Foreign Document(s) including all commercial document(s) duly notarized. Thereafter, the Bidder shall be compulsorily required to get all such "Apostilled" Foreign Document(s) approved, certified and attested from the Indian Embassy /Indian High Commission in that country where the 'Foreign Document(s)' were created or are originated from or the Ministry of External Affairs, Government of India, New Delhi and the Bidder/s shall follow any other norms/guidelines laid by the Ministry of External Affairs, Government of India, New Delhi

2.2.2 To be eligible for this RFQ cum RFP, a Bidder shall fulfil eligibility conditions as specified below:

Bidders shall mean the prospective Bidders having requisite technical experience and meeting the required minimum Financial Capacity as mentioned hereunder Clause 2.2.2 of this RFQ cum RFP.

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the **"Technical Capacity"**), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

(i) paid for, or received payments for, construction of Eligible Project(s); and/ or

(ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1 of this RFQ cum RFP (excluding the cost of land);

(iii) and/ or collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1 of this RFQ cum RFP, such that the sum total of the above, is more than Rs.185.20 Crore (Rs. One Hundred Eighty Five Crore and Twenty Lakhs only) (the **"Threshold Technical Capability"**).

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.4.1 of this RFQ cum RFP.

(B) **Financial Capacity:** The Bidder shall have a minimum Net Worth of Rs. 23.15 Crore (Rs. Twenty Three Crore and Fifteen Lakhs only) at the close of the immediately preceding financial year

In case of a Consortium, the combined technical capability and financial capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the Concessionaire SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 1 (one) year from the date of commercial operation of the Project, hold equity share capital not less than: 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire SPV; and (ii) 5% (five per cent) of the Project Cost specified in the Concession Agreement.

Provided further that each member of the Consortium shall have a minimum Net Worth of 7.5% of Estimated Project Cost in the immediately preceding financial year as set forth in

Clause 2.2.2 (B) above.

2.2.3 **O&M Experience:** The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 projects specified in Clause 3.4.1, which have an aggregate capital cost equal to the Estimated Project Cost . In the event that the Applicant does not have the requisite O&M experience, it shall either enter into an agreement for a period of 5 (five) years from COD, with an entity having the aforesaid experience, relating to the performance of O&M obligations in accordance with the provisions of the Concession Agreement failing which the Concession Agreement shall be liable to termination The Bidder shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the Project in conformity with the provisions of the Concession Agreement. The Applicant shall have to submit the undertaking in this regards as per the format as at Appendix-X, as applicable

2.2.4 The Bidders shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

(i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 For the purposes of this RFQ cum RFP, net worth (the "Net Worth") shall mean the aggregate value of the paid-up share capital[26] and all free reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated loses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation, profits on fair value measurement. Further, Statutory auditors shall ensure and certify that any disputed receivables, advances, other assets need to be excluded for Net Worth computation. While issuing the certificate Statutory Auditor shall also certify that certificate has been issued in compliance to Clause 2.2.4 of RFQ cum RFP.

2.3. Change in Ownership

By submitting the Bid, the Bidder acknowledges that it would be pre-qualified and short-listed on the basis of its Technical Capacity and/or Financial Capacity or those of its Consortium Members (in case of Bidder being a Consortium) who shall, at all times commencing from the date of incorporation of the SPV i.e. Concessionaire until 1 (one) year from the COD of the Project, hold equity share capital representing not less than:(i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire and (ii) 5% of the Total Project Cost;

The aggregate equity shareholding of the Selected Bidder (whether a single entity or a Consortium) in the issued and paid up equity capital of the Concessionaire shall not be less

than 100% (one hundred percent) at all times commencing from the date of incorporation of the Concessionaire, until and including the date of execution of the Concession Agreement, and thereafter, subject to the terms of this RFQ cum RFP and the draft Concession Agreement, the aggregate equity shareholding of the Selected Bidder (whether a single entity or a Consortium) in the issued and paid up equity capital of the Concessionaire shall not be less than 51% (fifty one percent) until 1 (one) year from the COD of the Project (the Lock- in-Period);

The Bidder further acknowledges and agrees that the aforesaid obligation sh all be the minimum and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder.

By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ cum RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.4. Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority . Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

2.5. Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding process.

2.6. Site visit and verification of information

i. Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

ii. It shall be deemed that by submitting a Bid, the Bidder has:

(a) made a complete and careful examination of the Bidding Documents.

(b) received all relevant information requested from the Authority;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6.1 above;

(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire.

(f) acknowledged that it does not have a Conflict of Interest; and

(g) agreed to be bound by the undertakings provided by it under and in terms hereof**.**

iii. The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFQ CUM RFP, including any error or mistake therein or in any information or data given by the Authority.

2.7. Verification and Disqualification

i. The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ cum RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

ii. The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified / rejected. If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

iii. In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority , that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or the Concessionaire SPV has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ CUM RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected

Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFQ CUM RFP, the Bidding Documents, the draft Concession Agreement or otherwise.

B. DOCUMENTS

2.8. Contents of the RFQ cum RFP

i. This RFQ cum RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10 of Section 2 of this RFQ cum RFP.

Invitation for Bids
Section 1. Introduction
Section 2. Instructions to bidders
Section 3. Evaluation of Bids
Section 4. Fraud and Corrupt Practices
Section 5. Pre-Bid Conference Section
6. Miscellaneous

Appendices
IA Letter comprising the Technical Bid including Annexure I to VI IB
Letter comprising the Financial Bid
II. Bank Guarantee for Bid Security
III. Power of Attorney for signing of Bid
IV. Power of Attorney for Lead Member of Consortium
V. Joint Bidding Agreement for Consortium
VI. Integrity Pact
VII. Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)
VIII. Policy for preventing Private Sector Monopoly in Major Ports
IX. Information on Security Clearance
X. Under taking for entering into Operation & Maintenance(O&M) Agreement

ii. The draft Concession Agreement provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFQ cum RFP and Feasibility Report will be provided after receiving of RFQ cum RFP Document fee.

2.9. Clarifications

i. Bidders requiring any clarification on the RFQ cum RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.8 of Section 1 of this RFQ cum RFP. They should send in their queries before the date mentioned in the Schedule of Bidding Process as specified in Clause 1.3 of Section 1 of this RFQ cum RFP. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

ii. The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

iii. The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority

shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives or advisors shall not in any way or manner be binding on the Authority.

2.10. Amendment of RFQ cum RFP

i. At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFQ cum RFP by the issuance of Addenda.

ii. Any Addendum issued hereunder Clause 2.10 of this RFQ cum RFP will be in writing and shall be send to all the Bidders.

iii. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.11. Format and Signing of Bid

i. The Bidder shall provide all the information sought under this RFQ cum RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects and Bid Security, copy of payment proof of cost of tender fee, Power of Attorney and Joint Bidding Agreement etc. as specified in Clause 2.12.ii of the RFQ cum RFP are received in hard copies prior on or before bid due date without which the bids may not be evaluated.

ii. The Bid shall be typed and signed in indelible blue ink by the authorized signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.12. Documents comprising Technical and Financial Bid

i. The Bidder shall submit the Technical Bid & Financial Bid online through e-procurement portal https://eprocure.gov.in/eprocure/app comprising of the following documents along with supporting documents as appropriate:

Technical Bid

(a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents.
(b) Power of Attorney for signing the Bid as per the format at Appendix-III;
(c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV.
(d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;
(e) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed.
(f) Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years from the Bid Due Date
(g) Integrity pact as per format given in Appendix VI shall be submitted by the Bidder with the Bid duly signed by authorised signatory and shall be part of the Concession Agreement.
(h) Bid Security of Rs. 92,60,000/- (Ninety Two Lakhs Sixty Thousands Thousands

only) in the form of Bank Guarantee in the format at Appendix-II from a Scheduled Bank or in the form of Demand Draft.

(i) Proof of online payment of Rs. 11,800/- (Rupees Eleven Thousand Eight Hundred only) towards RFQ cum RFP Process Cost transmitted online to Authority.

(j) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any.

(k) Policy for preventing Private Sector Monopoly in Major Ports as per format at Appendix-VIII

(l) Information for Security Clearance as per format at Appendix-IX

(m) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFQ cum RFP Bid duly signed by Authorized signatory and shall be part of the Concession Agreement.

(n) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

(o) O& M Undertaking if applicable as per format provided in Appendix-X

(p) Appendix-IB (Letter comprising the Financial Bid) –

ii. The Bidder shall submit the following documents physically (within 5 days of Application Due Date) to the Project Sponsoring Authority along with the scanned copies submitted online through e- procurement portal (on or before the Bid Due Date):

(a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents

(b) Original Power of Attorney for signing the Bid as per format at Appendix-III.

(c) if applicable, original Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV.

(d) if applicable, original Joint Bidding Agreement for Consortium as per the format at Appendix-V.

(e) Original Bid Security of Rs. 92,60,000/- (Ninety Two Lakhs Sixty Thousands Thousands only) in the form of Demand Draft or Bank Guarantee in the format at Appendix-II from a Scheduled Bank.

(f) Integrity pact on plain paper shall be submitted by the Bidder with the Bid duly signed by authorized signatory & shall be part of the Concession Agreement.

(g) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(a) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any and

(h) Original Statement of Legal Capacity as per format at Annexure V to Appendix IA.

(i) Original of Experience certificates apostille at foreign origin, if any.

(j) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder, along with the RFQ cum RFP Bid, duly signed by Authorised signatory and the same shall form part of the Concession Agreement.

(k) Original of Policy for preventing Private Sector Monopoly in Major Ports as per format at Appendix- VIII.

(l) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India").

(m) Memorandum and Articles of Association of the Bidder

(n) Information for Security Clearance as per format at Appendix-IX

(o) O& M Undertaking if applicable as per format provided in Appendix-X if applicable.

iii. The documents listed at Clause 2.12.ii shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification "***Bid for*** Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand top corner of the envelope.

iv. The envelope shall be addressed to the following officer and shall be submitted at the respective address:

ATTN. OF: Chief Engineer, SMPA, Kolkata

Address:

The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand Road,
Kolkata - 700001

v. If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder. Bidder (including all of its Consortium Members) failing to submit the original documents required as per Clause 2.12.ii above shall be liable to the rejection of their Bids and forfeiture of Bid Security

vi. Bids submitted by fax, telex, or e-mail shall not be entertained and shall be rejected.

2.13. Bid Due Date

Technical & Financial Bid comprising of the documents listed at Clause 2.12.(i) of the RFQ cum RFP shall be submitted online through e-procurement portal https://eprocure.gov.in/eprocure/app on or before 15:00 hrs on 26.03.2026 (in case any changes corrigendum will be issued) Documents listed at Clause 2.12.ii of the RFQ cum RFP shall be physically submitted by the Lowest Bidder before issue of LOA by the Authority. A receipt thereof should be obtained from the person specified at Clause 2.12.4.

The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 of this RFQ cum RFP uniformly for all Bidders.

2.14. Late Bids

E-procurement portal https://eprocure.gov.in/eprocure/app shall not allow submission of any Bid after the prescribed date and time at Clause 2.13 of this RFQ cum RFP.

2.15. Procedure for e-tendering

i. **Accessing/ Purchasing of Bidding Documents**

1. It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or Organisation) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e- tendering of the Authority.

DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFQ CUM RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.

The authorized signatory holding Power of Attorney or the person executing such Power of Attorney shall only be the Digital Signatory. In other cases, the Bid shall be considered **non-responsive**.

2. To participate in the bid it is mandatory for the Bidders to get their firms registered with e-procurement portal https://eprocure.gov.in/eprocure/app (or as prescribed by the Authority) for getting user ID & password, which has to be obtained prior to bid submission.
Following may kindly be noted:

   a. Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.
   b. Bids can be submitted only during the validity of registration.

3. If the firm / Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required a fresh registration.

4. The complete Bidding Documents can be viewed / downloaded by the Bidder from e-procurement portal of the Authority https://eprocure.gov.in/eprocure/app .

2.16. Preparation & Submission of Bids:

1. The Bidder may submit his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e- procurement is also available on e-procurement portal of the Authority.

2. The documents listed at Clause 2.12.1 above shall be prepared and scanned in different files (in PDF or RAR format such that file size is not exceed allowable size of portal) and uploaded during the on-line submission of Bid.

3. Bid must be submitted online only through e-procurement portal of the Authority https://eprocure.gov.in/eprocure/app using the digital signature of authorized representative of the Bidder on or before bid due date.

2.17. Modifications/ Substitution/ withdrawal of Bids

1. The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date and Time.

2. For modification of e-Bid, Bidder has to detach its old Bid from e- procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority,

shall be disregarded.

2.18. Online Opening of Bids.

1. Opening of Bids will be done through online process.

2. The Authority shall on-line open Technical Bids on, in the presence of the authorized representatives of the Bidders, who choose to attend. The Authority will subsequently examine and evaluate the Bids in accordance with the provisions of Section 3 of RFQ cum RFP.

2.19. Rejection of Bids

i. Notwithstanding anything contained in this RFQ cum RFP, the Authority reserves the right to reject any Bid and/or to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder Clause 2.17 of this RFQ cum RFP.

ii. The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.20. Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.21. Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.22. Correspondence with the Bidder

Save and except as provided in this RFQ CUM RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.23. Bid Security

i. The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crores (Rs. one thousand crore), in favour of the Authority in the format at Appendix-II (the "Bank Guarantee") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

ii. Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Kolkata (the "Demand Draft"). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

iii. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.

iv. Save and except as provided in Clauses 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority , without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority , and in any case within 180 (one hundred and eighty) days from the Bid Due Date. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said Demand Draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

v. The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security be provided by him in accordance with the provisions of the Concession Agreement.

vi. The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.23.vii herein below. The Bidder, by submitting its Bid pursuant to this RFQ cum RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFQ cum RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

vii. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:

a) If a Bidder submits a non-responsive Bid.

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b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice,

undesirable practice or restrictive practice as specified in Clause 4 of this RFQ cum RFP.

c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFQ cum RFP and as extended by mutual consent of the respective Bidder(s) and the Authority.

d) In the case of Selected Bidder, if it fails within the specified time limit –
   i) to sign and return the duplicate copy of LOA.
   ii) to sign the Concession Agreement; or
   iii) to furnish the Performance Security within the period prescribed in the Concession Agreement; or
   iv) If a Bidder fails to provide any clarification or explanation as may be sought by the Authority from such Bidder within the time specified for the same; or
   v) If a Bidder makes a misrepresentation as to any facts or figures regarding its Bid or during the Bidding Process in order to get the LOA/ Concession

e) Any other conditions, with respect to the Bidder as well as the Selected Bidder, for which forfeiture of Bid Security has been provided under this RFQ cum RFP

f) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

2.24. Prevention of Private Sector Monopoly in Major Ports:

Ministry of Shipping, Government of India vide its letter No. PD-24018/8/2009-PD.III dated 2nd August, 2010 has issued the policy (see Appendix VIII) to be followed by all Major Ports while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. The aforesaid policy or any other applicable policy shall apply mutatis mutandis to this Bidding Process and the Authority shall be entitled to disqualify any Bidder in accordance with the aforementioned policy.

2.25. National Security

The qualification of bidders shall be subject to clearance from National Security perspective subject to Security Clearance from Govt. of India

SECTION-3
EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1. Opening and Evaluation of Technical Bids

3.1.1 The Authority shall open the Technical Bids received online at the place specified in Clause 2.12.(iv) above and in the presence of the Bidders who choose to attend.

3.1.2 Bid documents of only those Bidders shall be opened online whose documents listed at Clause 2.12.i of this RFQ cum RFP.

3.1.3 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.17 of this RFQ cum RFP shall not be opened.

3.1.4 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.5 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid within a prescribed time period.

3.1.6 Bidders are advised that qualification of Bids will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given;

3.1.7 Any information contained in the Bid submitted shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information;

3.1.8 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information from consideration of eligibility and qualification of the Bidder.

3.1.9 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the prescribed eligibility, and may also, while computing the prescribed eligibility of the Bidder, make a further deduction equivalent to the claim rejected hereunder Clause 3.1.9 of this RFQ cum RFP. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the applicable provisions of this RFQ cum RFP.

3.2. Tests of responsiveness

3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFQ cum RFP. A Technical Bid shall be considered responsive only if:

(a) Technical Bid is received online as per the format at Appendix-IA including Annexure I to V.

(b) Technical Bid is accompanied by the Bid Security as specified in Clause 2.1.7 and 2.1.8 above.

(c) Technical Bid is accompanied by the Power of Attorney as specified in Clauses

2.1.9 above;

(d) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.10 above, if so required;

(e) Technical Bid contain all the information (complete in all respects);

(f) Technical Bid does not contain any condition or qualification or reservation;

(g) It contains information in formats same as those specified in this RFQ cum RFP;

(h) It contains certificates from its statutory auditors in the formats specified in this RFQ cum RFP

(i) Integrity pact as per format given in Appendix VI has been submitted by the Bidder with the Bid duly signed by authorised signatory.

(j) Technical Bid contains proof of online payment of Rs. 11,800/- (Rupees Eleven Thousand Eight Hundred only) towards cost of tender fee submitted online to Authority as specified in Clause 2.1.7 here above.

(k) it is not non-responsive in terms hereof.

(l) Information for security clearance as per format at Appendix-IX

(m) Undertaking for entering into Operation & Maintenance (O&M) agreement – Appendix X. (If applicable)

3.2.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3. Evaluation parameters

3.3.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Bids of firms/ consortium who do not meet these criteria shall be rejected.

3.3.2 A Bidder's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.4. Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the **"Eligible Experience"**) in relation to eligible projects as stipulated in Clauses 3.4.3 and 3.4.4 of this RFQ cum RFP (the **"Eligible Projects"**):

Category 1: Project experience on Eligible Projects in Port sector that qualify under Clause 3.4.3 of this RFQ cum RFP

Category 2: Project experience on Eligible Projects in Core sector that qualify under Clause 3.4.3 of this RFQ cum RFP

Category 3: Construction and/or operation experience on Eligible Projects in Port sector that qualify under Clause 3.4.4 of this RFQ cum RFP

Category 4: Construction experience on Eligible Projects in Core sector that qualify under Clause 3.4.4 of this RFQ cum RFP

For the purpose of this RFQ cum RFP:

(a) Port sector would be deemed to include Marine structures, On-shore and Off-shore Terminals, Berths, Jetties, Quays, Cargo Handling System, Bulk/Liquid Material Handling System, Port Based terminal facilities ,CFS/ICDs, Storage Tanks/Tank Farms, Conveyors, Gas or Oil Pipelines for Logistics Support to Port , Warehousing; and

(b) Core sector would be deemed to include power, telecom, ports ,airports, railways, metro rail, industrial parks/estates, Logistic park ,Pipelines, irrigation , water supply ,sewerage ,Highways and real estate development

3.4.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects

3.4.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

(c) It should have been undertaken as a PPP project on DBFOT, OMT, BOT, BOLT, BOO, BOOT, DBFOO or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity.

(d) the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty-six per cent) equity during the entire year for which Eligible Experience is being claimed.

(e) the capital cost of the project should be more than Rs.18.52 crore (Rupees Eighteen Crore and Fifty Two Lakhs only); and

(f) the entity claiming experience shall, during the last 5 (five) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of project assets, such as revenues from highways, airports, ports and railway infrastructure and other projects listed under Clause 3.4.1 above, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.4.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction and/or operation works or received payments from its client(s) for construction and/or works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years. For a project to qualify as an Eligible Project under Category 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the prescribed eligibility as specified in Clause 2.2.2. However, payments/receipts of less than Rs.18.52 crore (Rupees Eighteen Crore and Fifty Two Lakhs only ; shall not be reckoned as payments/receipts for Eligible Projects.

Note: In case of Projects under Category-3, payments made/received for operation of Eligible Projects may be included.

For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction

contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.4.5 The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

Illustration:

For illustration and avoidance of any doubt, if a Bidder has developed a Port sector project such that the project is eligible to qualify in Category 1 as well as in Category 3 of the Clause 3.4.1 above, then the Bidder shall quote the experience pertaining to this particular project only once towards meeting Threshold Technical Capacity.

3.4.6 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.5. Details of Experience

3.5.1 The Bidders should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.

3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

3.5.3 The Bidders should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-IA.

3.6. Financial information for purposes of evaluation

3.6.1 The Bids must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.

3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.6.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 above, and provide details as per format at Annex-III of Appendix-IA.

3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the form ats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFQ CUM RFP.

3.7. Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the Technically responsive Bidders through e- procurement portal and e-mail. The Authority shall online open the Financial Bids submitted by the Bidder **Royalty per MT excluding Applicable Taxes** received online on date and time to be informed in this Clause in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publicly announce the quoted Bid Parameter & amount for each of the technically responsive Bidder. The Authority shall prepare a record of opening of Financial Bids.

3.8. Selection of Bidder

3.8.1 Subject to the provisions of Clause 2.17.1 above, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 above and who quotes highest Royalty to the Authority, in accordance with Appendix-IB shall be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bid hereunder Clause 2.19 of this RFQ CUM RFP.

3.8.2 In the event that two or more Bidders quote the same amount of **[Bid Parameter Amount],** as the case may be (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend

3.8.3 In the event that the Highest Bidder withdraws or is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder Clause 2.19 of this RFQ CUM RFP.

3.8.4 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7(seven)days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder, in acknowledgement is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA and forfeit its Bid Security.

3.8.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3 above. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.9. Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.10. Correspondence with Bidder

3.10.1 Save and except as provided in this RFQ cum RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

3.10.2 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information

3.10.3 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

SECTION-4
FRAUD AND CORRUPT PRACTICES

4.1. Fraud and Corrupt Practices

4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

4.1.2 Without prejudice to the rights of the Authority under Clause 4.1.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder, at the sole and absolute discretion of the Authority , shall not be eligible to participate in any tender or RFQ cum RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.1.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority , shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or
(ii) save and except as permitted under the Clause 2.2.1(d) of this RFQ cum RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

(b) "Fraudulent Practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts.

(c) "Coercive Practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person‟s participation or action in the Bidding Process.

(d) "Undesirable Practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority w i t h the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION-5
PRE-BID CONFERENCE

5.1. Pre-bid Conference

5.1.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of Authority letter from the Bidder.

5.1.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

SECTION-6
MISCELLANEOUS

6.1. Miscellaneous

6.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.1.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to.

a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto.

b. consult with any Bidder in order to receive clarification or further information.

c. qualify or not quality any Bidder and/or to consult with any Bidder in order to receive clarification or further information

d. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

e. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.1.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority , its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.1.4 The Concession Agreement and RFQ cum RFP are be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFQ cum RFP, in the event of any conflict between then the priority shall be in the following order
(a) Concession Agreement
(b) The RFQ cum RFP
i.e. the concession Agreement (a) shall prevail over the RFQ cum RFP at (b) above
Authority

APPENDICES

APPENDIX IA
LETTER COMPRISING THE TECHNICAL BID
(Refer Clause 2.1.5, 2.12 and 3.2 of this RFQ cum RFP)

To,
The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand
Road,
Kolkata - 700001

Sub: Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode.

Dear Sir,

1. With reference to your RFQ cum RFP document dated ……., I/we, having examined the RFQ cum RFP document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as a Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require supplementing or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public Authority nor have had any contract terminated by any public Authority for breach on our part.

7. I/ We declare that:

    a. I/ We have examined and have no reservations to the RFQ cum RFP document, including any Addendum issued by the Authority
    b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ cum RFP document; and
    c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.1.3 of the RFQ cum RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ cum RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
e. the undertakings given by us along with the Application in response to the RFQ cum RFP for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/We shall continue to abide by them.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.19.2 of the RFQ cum RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ cum RFP document.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a member of a/ any other Consortium submitting a Bid for this Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory Authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory Authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ cum RFP at Appendix-VI thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the

provisions of this RFQ cum RFP, we shall intimate the Authority of the same immediately.

(a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA of the RFQ cum RFP document, and duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix III and IV respectively of the RFQ cum RFP, are also enclosed

(b) I/We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3 of the RFQ cum RFP Document.

16. I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for the period commencing from the date of incorporation of the Concessionaire / date of signing of the Concession Agreement up to at least one year from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire (ii) 5% of the Total Project Cost. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire under and in accordance with the RFQ cum RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

18. I/ We understand that the Selected Bidder shall be required to incorporate a Company under the Indian Companies Act, 2013, prior to execution of the Concession Agreement.

19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes and modifications in the aforesaid draft and agree to abide by the same.

21. I/We have studied all the Bidding Documents carefully. We understand that except to the extent as expressly set-forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

22. I/We offer a Bid Security of Rs.92,60,000/- (Rupees Ninety Two Lakhs Sixty Thousands only) to the Authority in accordance with the RFQ cum RFP Document.

23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strikeout whichever is not applicable) is attached.

24. The documents accompanying the Technical Bid, as specified in Clause 2.12. i of the RFQ cum RFP, have been submitted in a separate envelope and marked as "Enclosures of the Bid".

25. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

26. The Royalty per MT excluding Applicable Taxes has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFQ CUM RFP, draft Concession Agreement, our own estimates of costs and market demand and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.

27. I/ We agree and undertake to abide by all the terms and conditions of the RFQ cum RFP document.

28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}

29. I/ We certify that in terms of the RFQ CUM RFP, my/our Net worth is Rs. . (Rs. in words) and Rs, (Rs in Words) as Agregate Technical Capacity.

30. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFQ CUM RFP.

31. With respect to the details regarding security clearance provided in Appendix IX of my/our RFQ Cum RFP application, I/We accept and confirm to communicate to the Port Authority the changes in (a) Management Control of the Company/Companies and /or (b) Change of more than 10% in shareholding in the Company/Companies by any shareholder, within two weeks of change taking place.

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

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and ******Designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Appendix IA

Details of Bidder

(a) Name:
(b) Country of incorporation:
(c) Address of the corporate headquarters and its branch office(s), if any, in India:
(d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority :
   (a) Name:
   (b) Designation :
   (c) Company:
   (d) Address:
   (e) Telephone Number:
   (f) E-Mail Address:
   (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
   (a) Name:
   (b) Designation :
   (c) Address:
   (d) Phone Number:
   (e) Fax Number:

5. In case of a Consortium:
   (a) The information above (1-4) should be provided for all the Members of the Consortium.
   (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.1.16 (g) above should be attached to the Application.
   (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* **{Refer Clause 2.1.16(d)}**	Percentage of equity in the Consortium **{Refer Clauses 2.1.16(a), (c) & (g) of this RFQ CUM RFP}**
1.			
2.			
3.			
4.			

***** The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

(d) The following information shall also be provided for each Member of the Consortium: (Refer Clause 2.1.16 of this RFQ CUM RFP):

Appendix IA
Annex-I

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred[£] by the Central/ State Government, or any entity controlled by it, from participating in any project (DBFOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary): Refer. Clause : 2.1.17 of Section 2 of this RFQ CUM RFP:

Name of Bidder/ member of Consortium:

S. No.	Criteria	1st year	2nd year	3rd year
1.	If Bidder/ Consortium Member has either failed to perform for works of on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Bidder or any of its Consortium Member, as the case may be, or has been expelled / terminated by Central/ State Government, or any entity controlled by it for breach by such Bidder or any of its Consortium Member, along-with updated details of ongoing process of litigation / blacklisting.			

Appendix IA

Annex-II

ANNEX-II

Technical Capacity of the Bidder[@]

(*Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFQ cum RFP*)

Bidder type[#]	**Proposed Equity Shareholding in Consortium (%)**	**Member Code***	**Project Code****	**Category -**	**Experience**[¥] (Equivalent crore)[$$] Rs.		
					Payments made/ received for construction of Eligible Projects in Categories 3 And 4	Payments made for developme nt of Eligible Projects in Categories 1 and 2	Revenues appropriate d from Eligible Projects in Categories 1 and 2
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
Single entity Bidder			A				
			B				
			C				
			D				
Consortium Member 1			1a				
			1b				
			1c				
			1d				
Consortium Member 2			2a				
			2b				
			2c				
			2d				
Consortium Member 3			3a				
			3b				
			3c				
			3d				
Consortium Member 4			4a				
			4b				
			4c				
			4d				
Aggregate Technical Capacity= Rupees …..Crores							

[@] *Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.19 above and/ or by a project company eligible under Clause 3.4.3(b) hereinabove. In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.4.3(c) above and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.4.4 hereinabove. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22 above.*

[#] *A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.19 above, shall be provided.*

* *Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

** *Refer Annex-IV of this Appendix-IA. Add more rows if necessary.*

[$] *Refer Clause 3.4.1 of this RFQ CUM RFP.*

¥ *In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Technical Capacity of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Technical Capacity of an Eligible Project.*

Note: In case of Projects under Category-3, payments made/received for operation of Eligible Projects may be included.

[$$] *For conversion of US Dollars to Rupees, the rate of conversion shall be prevailing rate on the Bid Due date to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

Appendix
IA
Annex-III

ANNEX-III

Financial Capacity of the Bidder

(*Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.6 of the RFQ*

CUM RFP) (In Rs. crore[$$])

Bidder type [$]	Member Code[£]	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth[€]
			Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 1**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	***9)**
Single entity Bidder								
Consortium								
Member 1								
Consortium								
Member 2								
Consortium								
Member 3								
Consortium Member 4								
TOTAL								

Name & address of Bidder's Bankers:

[$]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

[£]For Member Code, see instruction 4 at Annex-IV of this Appendix-IA.

[€]The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.19 hereinabove.

[$$] For conversion of other currencies into rupees, see note below Annex-II of Appendix- IA.

Balance-Sheet (in Rs. Crores)

S. No	**In Rupee, at the end of concerned Financial Year**	**FY 2016-17**	**FY 2017-18**	**FY 2018-19**	**FY 2019-20**	**FY 2020-21**
	Paid up Equity (A)					
	Contributions (B)					
	Reserves (C)					
	Revaluation Reserves (D)					
	Miscellaneous Expenditure not written off (E)					
	Accrued Liabilities (F)					
	Net Worth = (A+B+C-D-E-F)					

Net Cash Accruals (in Rs. Crores)

S. No	In Rupee, at the end of concerned Financial Year	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
	Turnover /Income from Operations/Revenue (A)					
	Operating Cost (B) =(C+D+E)					
	Employees cost (C)					
	Admin and General Cost (D)					
	Other Costs (E)					
	Depreciation (F)					
	Interest (G)					
	Provisions (H)					
	Profit Before Tax I = (A-B-F-G-H)					
	Tax Paid (J)					
	Profit After Tax K (I – J)					
	Net Cash Accruals (K+F)					

Note: This information should be extracted from the Annual Financial Statement/Balance Sheet which should be enclosed, and the response sheet shall be certified by the Statutory Auditor of the Single Entity of the Consortium Member.

Appendix IA
Annex-III

Instructions :

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:

   (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate‟s financials;
   (b) be audited by a statutory auditor;
   (c) be complete, including all notes to the financial statements; and
   (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean aggregate value of the paid-up share capital[3] and all Free reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated loses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation, profits on fair value measurement. Further, Statutory auditors shall all ensure and certify that any disputed receivables, advances, other assets need to be excluded for Net Worth computation.

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22 of this RFQ CUM RFP.

5. In the case of a Consortium, a copy of the Joint. Bidding Agreement shall be submitted in accordance with Clause 2.1.16 (g) of the RFQ cum RFP document.

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.

7. The Bidder shall provide an Auditor‟s Certificate specifying the net worth and Agregate Technical Capacity (if applicable) of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.5 (ii) of the RFQ cum RFP document.

ANNEX-IV

Details of Eligible Projects

(*Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFQ Cum RFP*)

Project Code: **Member Code:**

Item (1)	**Refer Instruction** (2)	**Particulars of the Project** (3)
Title & nature of the project	4	
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.4.3 and 3.4.4 of the RFQ CUM RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. Refer to Clause 3.4.1 of the RFQ cum RFP for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 5 (five) financial years.

Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.22 above). For

Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.4.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.4.4 of this RFQ CUM RFP. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

7. In case of projects in Categories 1and 2, particulars such as name, address and contact details of owner/ Authority / Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.4.3 and 3.4.4 of this RFQ cum RFP documents.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.4.3 above).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Bidder"s statutory auditor[$] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects

Based on its books of accounts and other published information authenticated by it, this is to certify that …….. *(name of the Bidder/Member/Associate)* is/ was an equity shareholder in …….. *(title of the project company)* and holds/held Rs..... cr. (Rupees …….. crore) of equity (which constitutes %[€] of the total paid up and subscribed equity capital) of the project company from ……... *(date)* to …….. *(date)*[¥]. The project was/is likely to be commissioned on..... *(date of commissioning of the project)*.

We further certify that the total estimated capital cost of the project is Rs.....cr. (Rupees ……crore), of which Rs. …… cr. (Rupees …… crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

……

……

[$] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[£] Refer Clause 3.4.1 of the RFQ CUM RFP.

[€] Refer instruction no. 10 in this Annex-IV.

[¥] In case the project is owned by the Bidder company, this language may be suitably modified to read: "It is certified that (name of Bidder) constructed and/ or owned the (name of project) from ..... (date) to (date)."We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.4.1 and 3.4.3 (d) of the RFP during the past five financial years were Rs. cr. as per year-wise details noted below:

……
……

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation Date:
of the authorised signatory)

14. If the Bidder is claiming experience under Category 3 & 4[*], it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works[**]

Based on its books of accounts and other published information authenticated by it, {this is to certify that …….. *(name of the Bidder/Member/Associate)* was engaged by …….. *(title of the project company)* to execute …… *(name of project)* for ……. *(nature of project)}*[***]. The construction of the project commenced on …….. *(date)* and the project was/ is likely to be commissioned on.....*(date, if any)*. It is certified that ……. *(name of the Bidder/ Member/ Associate)* received/paid Rs. …….. cr. (Rupees …… crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs..... cr. (Rupees ……crore), of which the Bidder/Member/Associate received/paid Rs..... cr. (Rupees …… crore), in terms of Clauses 3.4.1 and 3.4.4 of the RFP, during the past five financial years as per year-wise details noted below:

……
……

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ Consortium.}[****]

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation of the
Date: authorised signatory).

**Refer Clauses 3.4.1 and 3.4.4 of the RFQ CUM RFP.*

***Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.*

****In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: " this is to certify that …… (name of Bidder/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the……. (name of Project company) when it undertook construction of the ……. (name of Project) through (name of the contractor).*

***** This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.*

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.19 of Section 2 of this RFQ CUM RFP, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[$]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of .....(*name of the Associate*) is held, directly or indirectly[£], by ..... (*name of Bidder / Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.19 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Bidder/ Consortium Member in the Associate*}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

[$] In the event that the Bidder/ Consortium Member exercises control oven an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score[β].

β Refer Clause 3.4.6 of the RFQ CUM RFP.

ANNEX-V
Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder / Lead Member of Consortium)

Ref. Date:

To,

The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand
Road,
Kolkata – 700001

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFQ cum RFP document.

We have agreed that . . . . . (insert member"s name) will act as the Lead Member of our Consortium.*

We have agreed that . . . . . (insert individual"s name) will act as our representative/ will act as the representative of the Consortium on its behalf* and has been duly authorized to submit the RFQ CUM RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and ******

Designation of the authorised signatory) For and on behalf of. . . . . .

Annexure VI

Guidelines of the Department of Disinvestment

(Refer Clause1.2.1)

Guidelines of the Department of Disinvestment

(Refer Clause1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of
Disinvestment Block 14,
CGO Complex ***City .
Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: **Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment**

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory Authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified

would be issued to it and it would be given an opportunity to explain its position.

(g)

Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest(EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory Authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and ******Designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

Under Secretary to the Government of India
(A.K.Tewari)

APPENDIX IB

Letter comprising the Financial Bid

(Refer Clauses 2.1.5, 2.12.1 and 3.2 of this RFQ cum RFP document)

To,

The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand
Road,
Kolkata – 700001

SUB: Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode.

Dear Sir,

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

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

2. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFQ CUM RFP, draft Concession Agreement and its Schedules, our own estimates of market demand and costs and after a careful assessment of the site and all own the conditions that may affect the Project cost and implementation of the Project.

3. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

4. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the afor esaid draft and agree to abide by the same.

5. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFQ CUM RFP.

6. I/ We hereby submit our Bid and offer as under:

   (i) I/We hereby offer to pay to the Authority a Royalty per Metric Ton (MT) for Bulk Cargo, excluding Applicable Taxes as entered in the prescribed Price Bid (Excel) format on the **CPP Portal.**

   The quoted Royalty shall constitute the revenue share of the Authority and shall be indexed annually in accordance with the variation in the Wholesale Price Index (WPI), in accordance with the provisions of the Bidding Documents and the Concession Agreement, for undertaking the aforesaid Project.

Yours faithfully,

Date: (Signature)

Name and ******Designation of the
Place: Authorised Signatory)
Name & seal of Bidder/Lead
Member:.....
Class III DSC ID of Authorised
Signatory :.....

APPENDIX II
Bank Guarantee for Bid Security
(Refer Clauses 2.1.7 and 2.23.i)

B.G. No. Dated:

1. In consideration of you, **********, having its office at **********, (hereinafter referred to as the "Authority ", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a Company registered under Companies Act, 2013) and having its registered office at . . . . . (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode. (hereinafter referred to as "the Project") pursuant to the RFQ cum RFP Document dated ……issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at and one of its branches at …….(hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFQ cum RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFQ cum RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 92,60,000.00 (Rupees Ninety Two Lakhs Sixty Thousands Only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 92,60,000.00 (Rupees Ninety Two Lakhs Sixty Thousands Only) .

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority .

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority , and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder Appendix II shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, Appendix II be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank‟s liability under this Guarantee shall be restricted to Rs. 92,60,000.00 (Rupees Ninety Two Lakhs Sixty Thousands Only) . The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before ***** (indicate date falling 180 days after the Bid Due Date).

14. This guarantee shall also be operatable at our Kolkata/Haldia branch , from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment hereunder Appendix II claimed, the said branch shall accept such invitation letter and make payment of amounts so demanded under the said invocation.

Signed and Delivered by ……..
Bank

By the hand of Mr./Ms

.....
,
its..... and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

APPENDIX III

Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.9 of this RFQ cum *RFP documents)*

Know all men by these presents, We,……(name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of …… and presently residing at ……., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ……, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode proposed or being developed by the Name of Authority (the "Authority ") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority , representing us in all matters before the Authority , signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority .

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …… DAY OF ……, 2026.

For …….

(Signature, name,)
Designation and address)
Person authorized by Board Resolution (in case of Firms/Company)/Partner in case of Partnership Firms

Witnesses:

1.

2.

Notarised

Person identified by me/personally appeared before me /signed before me/Attested/Authenticated*
(*Notary to specify as applicable)
(Signature, Name and Address of the Notary)

Seal of the Notary
Registration Number of the Notary
Date_____

Accepted

(Signature, name, ******Designation and address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure*.

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX IV

Format for Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the Name of Authority ("the Authority ") has invited bids from interested parties for the Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode (the Project"). Whereas,……..,. . . . . and …… (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and Authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium"s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, …….. having our registered office at ……., M/s……, having our registered office at ……., and M/s. ..... , having our registered office at ..... , (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s……, having its registered office at ……., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney") and hereby irrevocably authorise the Attorney (with power to sub - delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders" and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority , and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium"s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority .

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS . . . . . DAY OF . . . . . 2026.

For . . . . . .

(Signature, Name & Title) For

(Signature, Name & Title)

For

(Signature, Name & Title)

Witnesses:

1.

2.

(Executants)
(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX V

Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.10 & 2.1.16(g) of this RFQ cum *RFP document) (To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

AMONGST

1. {..... Limited, and having its registered office at…….} (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, having its registered office at…….} and (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, and having its registered office at…….} (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party**"

WHEREAS,

(A) THE NAME OF PROJECT SPONSORING AUTHORITY, represented by its**********and having its principal offices at ********** (hereinafter referred to as the "**Authority** " which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **Bids**") by its Request for Proposal No. dated .....(the "**RFQ CUM RFP**") for award of contract for the Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode (the "**Project**") through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ cum RFP document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the RFQ cum RFP document

that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ CUM RFP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**Concessionaire SPV**") under the Indian Companies Act 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Concession Agreement when all the obligations of the Concessionaire SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium;}

{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ cum RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the Concessionaire SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the Concessionaire SPV shall be as follows:

First Party:

Second Party:
{Third Party:}
{Fourth Party:}

6.2 The Parties undertake that a minimum of (I)26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV (ii) 5% of total Project Cost shall, at all times till one year from the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification of the Bidder for the Project in terms of the RFQ CUM RFP.

6.3 The Parties undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV at all times until 6 (six) months from the commercial operation date of the Project.

6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

6.5 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the Concessionaire SPV in terms of the Concession Agreement.}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and Authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and Authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;
(ii) violate any Applicable Law presently in effect and having applicability to it;
(iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified/selected or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority .

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

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of LEAD MEMBER by:	SECOND PART
(Signature)	(Signature)
(Name)	(Name)
(******Designation)	(******Designation)
(Address)	(Address)

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of THIRD PART	For and on behalf of FOURTH PART
(Signature)	(Signature)
(Name)	(Name)

(******Designation)	(******Designation)
(Address)	(Address)
SIGNED, SEALED AND DELIVERED For and on behalf of	SIGNED, SEALED AND DELIVERED For and on behalf of
FIFTH PART	SIX PART
(Signature) (Name) (Designation) (Address)	(Signature) (Name) (Design ation) (Address)

In the presence of:

1. 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and Authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX VI
Integrity pact
(*Refer clause 2.12.e of this RFQ* cum *RFP document)*

(_____Division)

Tender No._____

_____

This Integrity Pact is made at _____on this _____day of

_____2021 Between

Name of Authority **********, which has been entrusted with the responsibility of Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode hereinafter referred to as "The Principal", which expression shall unless repugnant to the meaning or contract thereof include its successors and permitted assigns.

and

_____. hereinafter referred to as "The Bidder/ Contractor/ Concessionaire/ Consultant" and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

Preamble

Whereas, the Principal intends to award, under laid down organizational procedures contract/s for ..... The Principal values full compliance with all relevant laws of the land, rules of land, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and for Contractor(s)/Concessionaire(s)/Consultant(s).

And whereas in order to achieve these goals, the Principal will appoint an independent external Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the Principles mentioned above.

And whereas to meet the purpose aforesaid, both the parties have agreed to enter into this Integrity Pact (hereafter referred to as Integrity Pact) the terms and conditions of which shall also be read as integral part and parcel of the Tender documents and contract between the parties. Now, therefore, in consideration of mutual covenants stipulated in this pact, the parties hereby agree as follows and this pact witnesseth as under:-

Article-1-Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principle:-

(a) No employee of the Principal, personally or through family members, will in connection with the lender for, or the execution of a contract, demand take a promise for or accept for self or third person any material or immaterial benefit Which the person is not legally entitled to.

(b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

(c) The Principal will exclude all known prejudiced persons from the process, whose conduct in the past has been of biased nature.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/ Regulations.

Article-2 Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

(a) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principals employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

(b) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission or bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

(c) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not commit any offence under the relevant IPC / PC. Act and other Statutory Acts; further the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not use improperly for purposes of completion or personal gain, or pass on to others, any informat ion or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

(d) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of foreign origin shall disclose the name and address of the Agents/ representatives in India. If any similarly the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) of Indian Nationality shall furnish the name and address of the foreign principle, if any.

(e) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connectio n with the award of the contract. He shall also disclose the details of services agreed upon for such payments.

The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not instigate third

persons to commit offences outlined above or be an accessory to such offences.

(f) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

Article 3 Disqualification from tender process and exclusion from future contracts

(1) If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) before award or during execution has committed a transgression through a violation of any provision of Article-2, above or in any other from such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) from the tender process.

(2) If the Bidder/Contractor/Concessionaire/Consultant has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder/Contractor/Concessionaire/Consultant for any future tenders/contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy or the Bidder/Contractor/Concessionaire/Consultant and the amount of the damage. The exclusion will be imposed for a minimum of 1 year.

(3) A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that "On the basis of facts available there are no material doubts".

(4) The Bidder/ Contractor/Concessionaire/Consultant will its free consent and without any influence agrees and undertakes to respect and uphold the Principal‟s absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

(5) The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder/ Contractor/Concessionaire/Consultant shall be final and binding on the Bidder/ Contractor/Concessionaire/Consultant.

(6) On occurrence of any sanctions/ disqualification etc. arising out from violation of integrity pact, Bidder/ Contractor/Concessionaire/Consultant shall not be entitled for any compensation on this account.

(7) Subject to full satisfaction of the Principal, the exclusion of the Bidder/Contractor/Concessionaire/Consultant could be revoked by the Principal if the Bidder/ Contractor/Concessionaire/Consultant can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

Article 4 Compensation for Damages

(1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award

according to Article3, the Principal shall be entitled to forfeit the Earnest Money Deposit/Bid Security or demand and recover the damages equivalent to Earnest Money Deposit/Bid Security apart from any other legal right that may have accrued to the Principal.

In addition to above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/Concessionaire/Consultant and/or demand and recover liquidated and all damages as per the provisions of the contact/Concession agreement against Termination.

Article 5 Previous Transgression

(1) The Bidder declares that no previous transgression occurred in the last 3 years immediately before signing of this integrity pact with any other Company in any country conforming to the anticorruption/Transparency International (TI) approach or with any other Public Sector Enterprise/Undertaking in India or any Government Department in India that could justify his exclusion from the lender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action for his exclusion can be taken as mentioned under Article-3 above for transgression of Article-2 and shall be liable for compensation for damages as per Article-4 above.

Article 6 Equal treatment of all Bidders/ Contractors/ Concessionaires/ Consultants/ Subcontractors

(1) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this integrity Pact, and to submit it to the Principal before contract signing.

(2) The Principal will enter into agreements with identical conditions as this one with all Bidders/Contractors/Concessionaire/Consultant and Subcontractors.

(3) The Principal will disqualify from the lender process all Bidders who do not sign this Pact violate previsions.

Article 7 Criminal charges against violating Bidder(s)/ Contractor(s)/ Concessionaire(s)/Consultant(s)/ Sub-contractor(s)

If the Principal obtains knowledge of conduct of a Bidder/Contractor/Concessionaire/Consultant or Subcontractor, or of an employee or a representative or an associate of a Bidder/Contractor/Concessionaire/Consultant or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Article 8 Independent External Monitor (IEM)

(1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the GM(Engineering) Haldia Dock Complex Syama Prasad Mookerjee Port Kolkata.

(2) The Bidder/Contractor/Concessionaire/Consultant accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Bidder/ Contractor/ Concessionaire/ Consultant. The Bidder/ Contractor/ Concessionaire/ Consultant will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the Project. The monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Concessionaire/ Consultant/ subcontractors with confidentiality.

(3) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/ Concessionaire/Consultant. The parties offer to the Monitor the option to participate in such meetings.

(4) As soon as the Monitor notices, or believes to notice any transgression as given in Article-2, he may request the Management of the Principal to take corrective action, or to take relevant action. The monitor can in this regard submit non- binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

(5) The Monitor will submit a written report to the ******Designation, [PROJECT SPONSORING AUTHORITY] within 8-10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

(6) If the Monitor has reported to the ******Designation , [PROJECT SPONSORING AUTHORITY], a substantiated suspicion of under relevant IPC/PC Act or any other Statutory Acts, and the ******Designation , [PROJECT SPONSORING AUTHORITY] has not, within the reasonable time taken visible action to proceed against such offence or reported it the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

(7) The word 'Monitor' would include both singular and plural.

Article 9 Pact Duration

This Pact begins when both parties have signed (In case of EPC i.e. for projects funded by Principal and consultancy services) It expires for the Contractor/Consultant 12 months after his Defect Liability Period is over or 12 months after his last payment under the contract whichever is later and for all other unsuccessful Bidders 6 months after this Contract has been awarded (In case BOT projects) It expires for the concessionaire 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after this Contract has been awarded.

If any claim is made/lodged during this time, the same shall be biding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged determined by ******Designation of [PROJECT SPONSORING AUTHORITY].

Article 10 Other Provisions

(1) This pact is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. ***City .

(2) Changes and supplements as well as termination notices need to be made in writing.

(3) If the Bidder/Contractor/Concessionaire/Consultant is a partnership or a Consortium, this pact must be signed by all partners or Consortium members.

(4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid, in this case, the parties will strive to come to an agreement to their original intentions.

(5) Any dispute/differences arising between the parties with regard to term of this Pact, any action taken by the principal in accordance with this Pact or interpretation thereof shallnot be subject to any Arbitration.

(6) He actions stipulated in the integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions to the extant law in force relating to any civil or criminal proceedings.

In witness whereof the parties have signed and executed this pact at the place and date first done mentioned in the presence of following witnesses:-

_____ _____

(For & On behalf of the (Principal) (For & On behalf of Bidder/

Contractor/Concessionaire/Consultant

(Office Seal)

Place _____

Date _____

Witness 1:

(Name & Address) _____

_____

_____

Witness 2:

(Name & Address) _____

_____

—

APPENDIX VII

Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand
Road,
Kolkata – 700001

Sub: Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode

Dear Sir,

With reference to your RFQ cum RFP document dated ……., I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

I/We have read the Clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;

I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority .

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Date:

Yours faithfully,

Place:

(Signature of the Authorised signatory)
(Name and Designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

Notes:
{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

APPENDIX VIII

Policy for Preventing Private Sector Monopoly in Major Ports

Government of India
Ministry of Shipping
(Ports Wing)

No.PD-24018/8/2009 - PD.III New Delhi-1, dated the 2nd August, 2010

To

The Chairman, All Port Trusts

Sub:- Policy for preventing private sector monopoly in Major Ports.

Sir,

In pursuance of private sector participation guidelines, 1996 for the Port Sector and with a view to ensure healthy competition and smooth award of the projects for capacity augmentation at the Major Ports, the Central Government hereby directs all Major Ports under Section 111 of the Major Port Trusts Act, 1963, to follow the following Policy while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. This policy is in supersession of this Ministry's letters No.PD-25021/13/2002-Pvt dated 11th November, 2002, No.PD-12013/2/2005-JNPT dated 26th September, 2007 and No.PD-11015/2/2006-VPT dated 1st October, 2008.

2. Policy

If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.

For the purpose of this policy, the terms

(i) 'Operator' includes consortium members of the bidder:

(ii) 'Associates' means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under common control with such Applicant/Consortium Member (the Associate). As used in the definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

(iii) 'Berth' shall have the same meaning as "Wharf" given in Section 2 (za) of the MPT Act, 1963.

(iv) 'Specific Cargo' means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo.

3. The policy shall be applicable with immediate effect and shall apply to Request for Qualification (RFQs) issued on or after this date.

4. It is also directed that the above provisions may be incorporated by the Major Ports in the Request for Qualification & Request for Proposal to give effect to the policy in relevant cases.

5. This issues with the concurrence of the Ministry of Law and Justice, Department of Legal Affairs and approval of Hon'ble Minister of Shipping.

Yours faithfully,

(Geetu Joshi)
Director
Tel No. 23321672

APPENDIX -IX

Information for SecurityClearance

(Applicants to provide information in the revised formats provided below)

Revised formats for seeking Security Clearance for Bidders to be provided in line with Ministry of Shipping letter vide F.No.PD-24018/12/2014-SCC dated 12/02/2016.

Revised Performa for Security Clearance:

I. Details in respect of Company/ Firm (Indian/Foreign):

S.No	Full Name of Firms/Bidders	Date of registration of the Company	Address of Head Office, Regional Office and Registered Office	Previous name of the company, if any	Details of earlier approvals, if any (ref.No. & date)

II. Details in respect of Directors.

Sl. No.	Full Name of Board of Directors	Present position held with date (since when)	Date of Birth	Parentage	Present and Permanent Address	Nationality	Passport No.and issue date, if any	Contact Address & telephone number

III. Details of Shareholders (All firms/companies/entities/individualhaving shareholding more than 10%).

Sl. No	Full Name	Parentage Father/ Mother	Date of Birth	Permanent Address	Present Address	Present position held in the Company if any	Nationality (if Holding dual Nationality, both must be clearly mentioned)	% of shares held in the Company

I. Details of Criminal cases, if any against thecompany/Director(s) as per Annexure.

Annexure

Self declaration for company of Director(s) for whom security clearance is sought

a. Name and address and registration number of the company:

b. Name and address of owners, promoters and directors of the company:

1. ……

2. …….

3. …….

4. ……

c. Is the company owners, promoters of directors listed above the subject of any

1. Preventive detention proceedings(PSA/NSA etc.) : Yes/No

2. Criminal proceedings : Yes/No

d. If yes, please provide following details

1. Detention / Case /FIR/warrant number :

2. Police station /District / Agency :

3. Section of Law :

4. Name and place of the court :

e. The above mentioned details are in respect of both India and any other foreign country.

Note : The above self declaration is required to be filled and signed by the authorized signatory of the company.

APPENDIX X

Undertaking for entering into Operation & Maintenance (O&M) agreement

(To be submitted on the letterhead of the Applicant/ lead member of the consortium)

Ref:- Date:

To

The Chief Engineer,
Syma Prasad Mookerjee Port, Kolkata,
#6, Fairlie Place, BBD Bag., Strand
Road,
Kolkata – 700001

Sub: "Development of Concrete Jetty and other facilities for Liquid Cargo Handling at Budge Budge, Syama Prasad Mookerjee Port, Kolkata on DBFOT basis through PPP mode"

"

Dear Sir,

We hereby agree that we_____(name of the Applicant/ Lead Member of Consortium and address of registered office) will irrevocably enter into an Operation and Maintenance (O & M) agreement with an entity having O & M experience as per the terms of the RFQ Cum RFP document dated___for a period of at least 5 (five) years from Date of Commercial Operation of the Project in accordance with the clause No.2.2.3 of RFQ Cum RFP document.

We also confirm that the Operation & Maintenance Contractor shall meet the O & M experience as set forth in clause no. 2.2.3 of RFQ Cum RFP document.

We shall further ensure that the Name, Credentials and experience of the Operation & Maintenance Contractor shall be provided to Syama Prasad Mookerjee Port , Kolkata when required to be done so by Syama Prasad Mookerjee Port , Kolkata for the purposes of evaluation and Security Clearance.

Thanking you

For and on behalf of (Applicant/ Lead Member):

Signature:
(Authorised Representative and Signatory)
Name of Person: Designation:

CONCESSION AGREEMENT

BETWEEN

BOARD OF AUTHORITIES FOR SYMA PRASAD MOOKERJEE PORT, KOLKATA (THE CONCESSIONING AUTHORITY)

AND

…… LTD.

(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF CONCRETE JETTY FOR HANDLING LIQUID CARGO AT BUDGE BUDGE, KOLKATA ON DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) MODE

14th January 2026

CONCESSION AGREEMENT

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at _____ on this the _____ day of _____

BETWEEN:

BOARD OF AUTHORITIES for SYMA PRASAD MOOKERJEE PORT, KOLKATA a permanent body having perpetual succession and a common seal constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at, 15, Strand Road, Kolkata-1.West Bengal _____hereinafter referred to as **"the Concessioning Authority"** (which expression shall, unless repugnant to the context or meaningthereof, include its successors and permitted assigns);

AND

1. _____**LIMITED**, a company registered under the Companies Act, 2013, 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 permitted assigns).

WHEREAS:

(A) The Concessioning Authority is desirous of implementing a Project (as defined

hereinafter) for Selection of Private Developer for Development of Concrete Jetty for Handling Liquid Cargo at Budge Budge, Kolkata on Design, Build, Finance, Operate and Transfer (DBFOT) mode through private sectorparticipation;

(B) [In or about _____, the Concessioning Authority invited applications from the interested parties in accordance with the Request for Qualification cum Request for Proposal (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 Concessioning Authority received applications from various parties including the application dated _____submitted by the Applicant/ Consortium in accordance with the Request for Qualification Cum Request for Proposal][1];

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

(E) The Applicant/Consortium has/have incorporated the Concessionaire as a special purpose company in India, under the Companies Act,2013 to implement the Project;

(F) Following the issue of the Letter of Intent for Award of Concession, the Concessioning 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:

[1] To be deleted in case of single stage bidding process

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1Definitions

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

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

"**Additional Termination Payment**" means the amount payable upon termination in respect of Specified Assets, if any, as limited by the provision of Clause 17.8;

"**Adjusted Depreciated Value**" means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

"**Adjusted Equity**" means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Date of Award of Concession and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point two two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD and the

Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

"**Adverse Impact**" shall have the meaning as set forth in Clause 13.1.2;

"**Affected Party**" shall have the meaning as set forth in Clause 14.1;

"Affiliate/Associate" 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, or by operation of law, or 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, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, treaties and conventions having the force of law and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, 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

"Applicable Tariff Guidelines" shall have the same meaning ascribed to it in Article 8.1.

"Applicant" means [●][2]
"Appointed Date" means Date of Award of Concession

"Approved Valuer" means a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value.

"Average Daily Tariff" means the amount arrived at by dividing the total Tariff collected in the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 5%; provided that the Average Daily Tariff for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Tariff collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Tariff payable by any segment of cargo has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Tariff for such period.

"Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

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

"Bid Security" means the bank guarantee [●] dated [●] furnished by the Applicant/Consortium along with its Bid.

"Board" means the Board of Authorities for the Port of Syama Prasad Mookejee Port, Kolkata.

"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.

"Committee" shall have the meaning assigned to it under Article 13.1.2

"Concession" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing

[2] The name and registered office address of the single applicant to be inserted

the Project and providing Project Facilities and Services.

"Concessioning 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 2.2of this Agreement.

"**Conciliation & Settlement Committee**" shall have the meaning assigned to it under Article 19.3

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

"Consortium" means the consortium consisting of (i) XXXX, (ii) YYYY, and (iii) ZZZZ formed, to implement the Project.

"Construction Phase" means the period from the Date of Award of Concession to the Commercial Operations Date in line with Project Schedule set out in Appendix-5.

"Construction Works" means all works, equipment 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[3] 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.

"CPI (IW)" means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

"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.

"Commercial Operations Date or COD" means the date on which the Concessionaire receives the Completion Certificate of construction in accordance with the provisions of this Agreement / Major Ports Authorities Act 2021.

"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 Senior Lenders towards Total Project Cost, expressed in Indian rupees as may be outstanding and payable to the Senior Lenders under the Financing Documents on the Transfer Date:

(a) the principal amount of the debt including any subordinated debt provided by the Senior Lenders under the Financing Documents for financing the Total Project Cost ("the Principal") but excluding

(i) working capital loans; (ii) any part of the Principal that had fallen due for repayment two years prior to the Transfer Date; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority; and 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 hadfallen due 1 year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Concessioning Authority Default;provided further that the Debt Due, on or after COD , shall in no case exceed 85% of the Total Project Cost.

"**Deemed Performance Security**" shall have the meaning as set forth in Clause 4.2

"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.

"**Emergency**" means a condition or situation that is likely to endanger the security of the individuals on or about the Project or which poses an immediate threat of material damage to any of the ProjectAssets, and includes a threat to public order or national security;

"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.

"Equity" means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and such other form of equity shares including, but not limited to bonus shares and right shares subscribed by the Shareholders for meeting such equity component.

"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 Concessioning Authority and the Senior Lenders/Senior Lenders representative substantially in the format set out in Appendix 15 hereto.

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

"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).

"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 Senior 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.

"Financial Model" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein, as set out in Appendix 16

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

security for the Financial Assistance.

"Financial Package" means the financing package indicating the total capital cost of Project Completion and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity and all Financial Assistance specified in the Financing Documents.

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

"GoI" means the Government of India.

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

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

"**Independent Engineer**" means a technical consultancy firm appointed in accordance with Article 5.1 for supervision and monitoring of compliance by the Concessionaire with the Scope of Work, 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.

"Indian Ports Association" means the Apex body of Major Ports of India registered under Societies Registration Act.

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

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

"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% of the directors, managers, partners or other individuals exercising similar authority with respect to the Concessionaire.

"Material Adverse Effect" means material adverse effect of any act or event on the ability of either Party to perform any of its rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party.

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

"Minimum Guaranteed Cargo" or "MGC" shall have the meaning ascribed to it in Article7.1(a)(xii).

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

"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

"O&M Expenses" means expenses incurred by or on behalf of the Concessionaire or by the Concessioning Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"Operations Phase" means the period from the COD 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 Concessioning Authority or the Concessionaire as the context may require or admit and **"Parties"** means both Concessioning Authority and Concessionaire.

"Performance Standards" means the minimum standards of performance set out in Appendix 14 and Appendix 18, set out respectively for the Concessionaire and the Concessioning Authority, with regards to 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 Concessioning 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 Concessioning Authority.

"Port Limits" means limit prescribed in the Port Limit notification for the Syama Prasad Mookerjee Port, Kolkata by the Government of India dated June 19, 2001 as amended, supplemented or replaced from time to time.

"**Preservation Costs**" shall have the meaning as set forth in Clause 6.6 (c).

"**Price Index**" shall comprise:

a) 70% of WPI; and
b) 30% of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

"Project" means the design, finance, construction, operation, maintenance, and marketing and providing of the Project Facilities and Services in accordance with the provisions of this Agreement respect of Development of Concrete Jetty for Handling Liquid Cargo at Budge Budge, Kolkata on

Design, Build, Finance, Operate and Transfer (DBFOT) mode.

"**Project Assets**" means all physical and other assets relating to and forming part of the Site including:

a) rights over the Site in the form of licence, Right of Way or otherwise;

b) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems and administrative offices;

c) Project Facilities and Services situated on the Site;

d) all rights of the Concessionaire under the Project Contracts;

e) financial assets, such as receivables, security deposits etc.;

f) insurance proceeds; and

g) Applicable Permits and authorisations relating to or in respect of the Project;

"Project Capacity" means the capacity of the Project Facilities and Services to handle 1.125 MTPA of Liquid Cargo per annum after COD .

"Project Contracts" means collectively this Agreement, the EPC Contract, the Financing documents, O&M Contract and any other material contract (other than 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 Scope of Work, to be provided by the Concessionaire during the Concession Period, in accordance with this Agreement.

"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. This shall also include additional land, utilities and services allowed by Port in terms of Article 7.1 (c)(iii), wherever applicable.

"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 Qualification Cum Request For Proposal" or **"RFQ cum RFP"** means the Request for Qualification Cum Request For Proposal dated [●] issued by the Concessioning Authority inviting applications in accordance therewith for shortlisting the competent applicants that can be subsequently bid for the Project and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority

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

"Royalty" means the revenue share payable by the Concessionaire to the Concessioning 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 along with the statement of conditions with respect thereto framed and notified by competent authority under the provisions of MPA Act, as applicable.

"Scheduled Completion Date" means 24 (Twenty Four) months for construction from the date of Award of Concession as set out in Appendix-5.

"Scope of Work" 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.

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

"Senior lenders" means the financial institutions, multilateral lending agencies, banks, including their trusts and funds, and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire.

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

"Specified Assets" means such of the Project Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD , but no later than the 20th (twentieth) anniversary of the Date of Award of Concession; provided that Specified Assets shall not include assets that are part of Scope of Work mentioned in Appendix 4 of Concession Agreement and any improvement on existing assets; provided further that any Specified Assets shall be constructed, acquired or installed by the

Concessionaire only with the prior approval of Concessioning Authority.

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 21.2.2 (a).

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

"**Supporting Project Infrastructure**" means the supporting project facilities and services mentioned in Appendix 19 to be provided by the Concessioning Authority.

"Tariff" means the applicable rate(s) that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services.

"Taxes" means any Indian taxes including GST, excise duties, customs duties, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

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

"**Termination Payment**" means the amount payable by the Concessioning Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon termination

"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 Syama Prasad Mookerjee Port, Kolkata.

a) **"Total Project Cost"** means the capital cost incurred on construction and financing of the Projectand shall be limited to the lowest of:the capital cost of the Project, as set forth in the Financial Package at the date of FinancialClose;
b) the actual capital cost of the project upon completion approved by Independent Engineer and Statutory Auditor and submitted to Concessioning Authority at the time of issuing Completion Certificate
c) a sum of Rs. 92.60 Crores (Rupees Ninety Two Crores & Sixty Lakhs).

provided further that in the event of termination, the Total Project Cost shall be deemed to be

modifiedto the extent of variation in Price Index occurring in respect of Adjusted Equity, as the case may be,in accordance with the provisions of this Agreement

"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.

"**User**" means a person including any vessel or other person, who uses or intends to use the Project or any part thereof, including any or all Project Facilities & Services, on payment of Tariff or in accordance with the provisions of this Agreement and Applicable Laws

"**Vesting Certificate**" shall have the meaning as set forth in Clause 18.5;

"**WPI**" " means The Wholesale Price Index shall mean the Wholesale Price Index for all Commodities as published by the Office of the Economic Adviser, Department of Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce & Industry, Govt. of India and shall include any index which may substitute the Wholesale Price Index by the Govt. of India. In case of change of base year of the Wholesale Price Index during the Concession Period by the Authority, the applicable index of the relevant year (with different base year) would be compared with that of January Month of the year in which RFQ-Cum-RFP is submitted, by using the linking factor declared by the Office of the Economic Adviser, Department of Promotion of Industry & Internal Trade (DPIIT), Ministry of Commerce & Industry, Govt. of India.

In case Govt of India designates any other Ministry/Department/Authority to publish the Wholesale Price Index for all Commodities during the concession period, the Wholesale Price Index for all Commodities and linking factor declared by the said authority would be considered .

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.

"**GST**" means Goods and Services Tax

"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.

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 RFQ-Cum-RFP 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;

n) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;

o) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

p) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof , shall not apply; and

q) 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 Concessioning Authority (a) the License Fee and (b) Royalty, and performing its obligations as set out in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project Facilities and Services as per Scope of Work.

2.2 Concession Period

The Concession hereby granted is for a period of 30 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 as per Scope of work in accordance with the provisions hereof.

Provided that: -

a) in the event of the Concession being extended by the Concessioning Authority beyond the said period of 30 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.

Provided further that, the Concessionaire shall, at any time not earlier than 25th (Twenty fifth) anniversary of the Appointed Date and no later than 27th (Twenty seventh) anniversary of the Appointed Date, intimate the Concessioning Authority about its interest and request for renewing/ extending the term of this Concession by another period of 15 years. While making such request, the Concessionaire shall submit a confirmation that it is agreeable to participate in the international competitive bidding process for the determination of the Royalty for an additional period of 15 years, in the form and manner, as may be prescribed by the Concessioning Authority, at such time, and in any such case of international competitive bidding:

a. the Concessionaire shall have a right to match the highest bid, if its bid is within 10.00% of the

highest bid that may be offered at that time in accordance with the terms and conditions of the bidding documents issued at such time;

b. the Affiliate(s) of the Concessionaire shall not be qualified, either directly or indirectly, to participate in any such bidding process; and

c. it is clarified the Concessionaire shall be deemed to be qualified to submit the financial bid without being required to participate in the pre- qualification process and shall not be required to submit any documents for pre-qualification.

Provided further that, in the event the Concessionaire has been in material default of the provisions of this Agreement as a result of which the cumulative damages imposed upon him under the provisions of this Agreement 20% of the Performance Security, then, the Concessioning Authority shall not be under any obligation to extend the Concession Period or provide the right to match the highest bid to the Concessionaire in accordance with this Clause 2.2. In any event, at all times, any decision concerning the extension of the Concession Period shall vest with the Concessioning Authority.

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 Concessioning Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Port's Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

b) The Concessionaire shall at its costs, charges and expenses make such development and improvements in the Project Site and Port's Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Port's Assets

The Concessionaire shall not without the prior written consent or approval of the Concessioning 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 Concessioning 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 Concessioning Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioning Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Port Assets, which the Concessioning Authority maynow possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioning Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Port Assets or the Project Site.

2.7 Acceptance of the Port Assets

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

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

2.8 Peaceful Occupation

The Concessioning Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site and Port's Assets during the Concession Period.

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. Deleted

vi. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;

vii. Submission to Concessioning Authority of its Financing Package, Financial Model and Financing Documents for the Project and demonstrating Financial Close for verification that there is no inconsistency/contradiction with the terms & condition of the agreement. Authority, within 15 days shall notify Concessionaire of inconsistency/contradictions, if any, which shall be promptly addressed by the Concessionaire.

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 Concessioning 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 Concessioning 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.

xi. Executed and procured execution of the Substitution Agreement

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

i. procurement of the clearances required for the Project, as set out in Appendix- 8 (B); provided that in case any modification/alteration/deviation to the existing environmental clearance is necessitated owing to Concessionaire's requirements, and the same entails a delay in procuring the revised environmental clearance by the Concessioning Authority beyond the stipulated period of 180 days, such delay shall not be attributable to the Concessioning Authority in any manner or circumstances whatsoever.

ii. handing over physical possession of the Project Site and/or the Port's Assets for the purposes of the Project after procurement of the required clearances as per Article 3.1 b (i) aboveand receipt of performance guarantee / security from the Concessionaire with the provisionthat license fee, service tax etc. shall be paid by Concessionaire from the date of handing over.

iii. provision of or putting in place arrangements for the provision of Supporting Project Infrastructure by the Concessioning Authority as provided in the Appendix 19.

3.2 The aforesaid Conditions Precedent shall be complied with within 180 Days of the date of the Agreement. For the purpose of compliance of Financial Close obligation, Concessionaire, shall not be considered at default if the conditions pending for achieving financial close are only those which are required to be fulfilled by the Concessioning Authority under Article 3.1(b).

3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioning Authority at any time in its sole discretion or the Concessioning 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 Concessioning 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 or the Concessionaire may grant additional time for compliance with these conditions on the basis of a request from the Concessioning Authority and the Concessioning Authority shall be bound to ensure compliance within such additional time as may be specified by the Concessionaire.

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Performance Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioning Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% 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 Concessioning 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 Concessioning 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 per cent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% 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 Concessioning Authority, the Concessioning 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 Concessioning Authority an unconditional and irrevocable bank guarantee, in favor of the Concessioning Authority encashable and enforceable at Kolkata substantially in the form set forth inAppendix 9 or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the **"Performance Guarantee"**). The Performance Guarantee shall be for a sum of Rs. 4,63,00,000.00 (Rupees Four Crore Sixty Three Lakhs Only). Till such time the Concessionaire provides to Concessioning Authority thePerformance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. ThePerformance 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 Guaranteeto the full amount in case of part encashment of the same by the Concessioning Authority. This shallbe done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in theform of a letter of credit shall be irrevocable and replenished from time to time such that an amountof Rs. 4,63,00,000.00 (Rupees Four Crore Sixty Three Lakhs Only) is available in immediate encashment to the Concessioning Authorityfor the entire period of the Construction Phase. The Performance Guarantee furnished under thisprovision shall be valid until expiry of 6 (six) months from the COD. Failure of the Concessionaire toprovide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee inaccordance with this Article shall entitle the Concessioning Authority to forthwith terminate thisAgreement and also if relevant, to forfeit the Bid Security.

The Performance Bank Guarantee may be provided from any Kolkata Branch of any scheduled bank of India and in case of outstation BG, the same is to be confirmed by any Kolkata Branch of the Bank and the said Kolkata Branch would take the liability in case of claim and the jurisdiction would be under Hon'ble Calcutta High Court.

4.2 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security 6 (six) months from the COD , a substitute Performance Security for a like amount shall be deemed to be created as if it is a Performance Security for and in respect of the entire Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 9.5.1, constitute the first and

exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Concessioning Authority, and the Concessioning Authority

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shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 4.3. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

4.3 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Concessioning Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

4.4 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Concessioning Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 5

INDEPENDENT ENGINEER

5.1 Independent Engineer

a) Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by Indian Ports Association for the purpose, then Independent Engineer shall be selected out of that panel. The Concessioning Authority shall complete the selection process within a period of 3 months of the date of this Agreement. The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7.

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 COD. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7. On expiry or termination of the aforesaid appointment, the Concessioning Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Appendix 7, and such procedure shall be repeated after expiry of each appointment.

c) The costs and expenses of the Independent Engineer for their services shall be borne by the Concessioning Authority and Concessionaire, equally.

d) If the Concessioning 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 Concessioning 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.

f) In the event that the Concessioning Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Concessioning Authority may, in the interim, designate and authorise any person for a maximum duration of 90 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such

functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 5.1 (f) shall in any manner restrict the rights of the Concessioning Authority to enforce compliance of the provisions of this Agreement.

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 Scope of Work.

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 Concessioning 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 the comments/observations of the Concessioning Authority in respect thereof within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

c) In the event that the Independent Engineer/ Concessioning Authority has observed that the Designs and Drawings are not in conformity with the Scope of Work , the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer and Concessioning Authority with regards its compliance.

d) If the Independent Engineer /Concessioning Authority 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/ Concessioning Authority has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall been titled to proceed with the Project accordingly.

e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioning Authority at its sole discretion may suitably extend the Construction Phase or provide other relief (excluding any liquidated damages or financial compensation paid by the Concessioning Authority to the Concessionaire) 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 /Concessioning Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer /and Concessioning Authority.

g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be 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) Within 90 (ninety) days of COD , the Concessionaire shall furnish to the Concessioning Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Concessioning Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

6.3 Construction Phase

a) The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with Appendix 4, the Project Schedule and shall also obtain from the IndependentEngineer a certificate as to completion of construction of Project Facilities and Services inaccordance with the provisions of this Agreement (**"Completion Certificate"**) not later than 24 Months from the date of commencement of the Concession Period.

b) During the construction period, the Independent Engineer shall inspect the construction works and shall require the Concessionaire to carry out or cause to be carried out Tests as set out in Appendix 7. The remedial measures required to be taken by the Concessionaire, in case of any defects or deficiencies in the Construction works, shall be as set out in Appendix 7.

c) Concessionaire shall be entitled to approach Concessioning Authority for permission to use the assets handed over to it by Concessioning Authority and/or the Project Facilities and Services developed by the Concessionaire for handling cargo during the period between handing over of assets and achievement of COD which shall be allowed as per terms and conditions given in Concession Agreement subject to no extension of construction period on this account.

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 Concessioning 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 Concessioning 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 Concessioning Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioning Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioning Authority will not be enforceable against the Concessioning 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 Concessioning 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 Concessioning Authority of any works shall not, in relation to such works,

   (i) amount to any consent or approval by the Concessioning Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioning 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

   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 Concessioning Authority

In addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessioning 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 effort 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 Provisional 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 26 of the MPA 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.
f) Maintenance dredging at Jetty Face by Concessioning Authority.

6.6 Suspension of Works

a) Upon recommendation of the Independent Engineer to this effect, the Concessioning 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 Concessioning Authority, such work threatens the safety of the Users or any other person on or about the Project. Provided, however, that in case of an Emergency, the Concessioning Authority may suo moto issue the notice referred to hereinabove.
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 Concessioning Authority and thereupon represent to the Concessioning 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 Concessioning 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.

c) Subject to the provisions of Clause 14.9, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessioning Authority, the Preservation Costs shall be borne by the Concessioning Authority.

d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the project completion schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority accordingly whereupon the Concessioning Authority shall extend such project completion schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date .

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 Concessioning 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) All Tests shall be conducted in accordance with Appendix 7 at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with specifications and standards and if it isreasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the specifications and standards, it shall have the right to suspend or delay such Test and require the Concessionaire toremedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or caused to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards.

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 Concessioning 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. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion Certificate. 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 Concessioning Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessioning 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 Concessioning Authority, the Concessioning Authority may, in its discretion, reduce the scope of Project and the Total Project Cost will be reduced to the same extent. Upon such reduction of Total Project Cost, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

6.8 Change of Scope

a) The Concessioning 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 Completion Date. Provided further, the cost of implementinga single Change of Scope shall not exceed a sum corresponding to 5% of the Total Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining toChange of Scope shall not exceed a sum corresponding to 20% of the Total Project Cost ;

b) If the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority does not disagree with the cost assessment of the Concessionaire, the Concessioning 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 Concessioning 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 the Independent Engineer to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioning 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 Concessioning Authority shall make an advance payment to the Concessionaire of a sum equal to 20% of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioning 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 Concessioning Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioning Authority shall disburse to the Concessionaire after deducting Pro-rata advance payment, 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 equipment following an order for a Change of Scope;

g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioning 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% of the bid amount to the Concessioning 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% thereof; It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Concessioning Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 6.8 (g) if such works or services cause a Material Adverse Effect on the Concessionaire.

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/or improved Project Facilities and Services, it shall by notice in writing request the Concessioning Authority to consider such Change of Scope. The Concessioning Authority shall respond within 45 (forty-five) days of receipt of such notice, either accepting such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioning Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified

that the provisions contained in Article 6.8. (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement and delays for reasons not attributable to the Concessioning Authority, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of 0.1% (zero point one per cent)] 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 Completion Date as the case may be. Provided such liquidated damages shall not in aggregate exceed 5% of the Total Project Cost andunless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall notbe payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specifiedobligation. Provided further that in the event COD as the case may be is achieved on or before the Scheduled CompletionDate, the damages paid under this Clause 6.9 shall be refunded by the Concessioning Authority to theConcessionaire, but without any interest thereon. The Parties agree that the liquidated damages asprovided are a genuine pre-estimate of the damages the Concessioning Authority is likely to sufferand 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 thespecified limit of 5% of the Total Project Cost, the Concessioning Authority shall be entitled toterminate this Agreement and the consequences of termination as laid down in Article 16.5 shallfollow. The Concessioning 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 / jetty and Terminal Operations:

The Concessionaire shall:

a) promptly commence operations of the upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;

b) make efforts to maximise cargo handled so as to achieve optimal utilization of the Project Facilities and Services;

c) ensure compliance of the Project Facilities and Services at least as per the Scope of Work.;

d) be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project assets during the concession period;

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

f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;

g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;

h) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;

i) 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;

j) subject to the provisions of this Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide under the provisions of the MPA Act; and

k) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

l) Collect Berth / Jetty Hiring Charges.

m) Activities pertaining to loading/unloading, transfer, storage, aggregation, evacuation as well as other allied, ancillary and associate services including deployment of equipment both on-board and on-shore.

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 Scope of Work and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipment; and

b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

iii. Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Scope of Work, 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 Concessioning 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 Concessioning Authority

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

vii. Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Independent Engineer 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 Concessioning Authority provide the authorized representatives of the Concessioning 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 Concessioning 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 Concessioning Authority, Monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning 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 Concessioning 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 Concessioning Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time.

xi. Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and

the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel.

Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

Further, the Concessionaire shall comply with the requirements of employing the existing personnel/ labour as agreed to and set out in Appendix 11. All labour law compliances shall be that of the Concessionaire alone.

xii. Minimum Guaranteed Cargo

The Concessionaire hereby unconditionally guarantees the Concessioning Authority annual cargo of the levels set out in Appendix 13 (**"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 MPA 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 Concessioning Authority, its officers, employees, agents and representatives (the **"Indemnitees"**) against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 7 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.

xiv. Maintenance of Complaint Portal

a) The Concessionaire shall maintain a "Complaint Portal" on its website which shall be available to all users of the Project Facilities and Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Concessioning Authority website with an alert system for real time access to the complaints.

b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Authority and maintain a proof of reply.

c) If Concessionaire fails to address the grievance and the complaint makes a reference to Concessioning Authority, it will issue directions which shall be complied by the Concessionaire.

7.1 (b) Rights of Concessionaire

i. Refinancing

Upon request made by the Concessionaire to this effect, the Concessioning Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the Reserve Bank of India and other competent authority as applicable, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior written consent of the Concessioning Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ii. Preferential and Priority Berthing

Normally, except for the priority and preferential berthing that may be authorized in terms of guidelines issued by the Government from time to time, the Concessionaire shall 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. However, if there is a requirement to offer preferential or priority berthing to any one or more shipping lines or vessel owners/operators to optimize the use of the Project Facilities and Services, it shall be done in accordance with the priority berthing norms agreed in writing between Concessionaire and Concessioning Authority

iii. 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 MPA 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.

7.1 (c) Obligations of the Concessioning Authority

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

i. Marine and Port Services

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

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

b) maintenance of the entrance channel draft at 8.0 meter, provided this draft may be increased in future based on mutual agreement between the Concessioning Authority and Concessionaire(s) on cost sharing and any other aspects subject to such cost sharing mechanisms as may be determined under Clause (i) below

c) waterside safety and safety of navigation;

d) maintenance of the dredged draft alongside the jetty at 8.0 meter, provided this draft may be increased in future at the cost and risk of the Concessionaire subject to the approval from Concessioning Authority

e) carry out capital or maintenance dredging operations, if any that may be required to ensure the draft to be provided or maintained at the levels agreed under this Agreement, with minimum inconvenience to or dislocation of the Project Facilities and Services;

f) provision and maintenance of all general port infrastructure other than those covered under the Concession, necessary for management, operation and maintenance of the Project Facilities and Services;

g) provide for/put in place arrangements for provision of Supporting Project Infrastructure as provided in Appendix 19;

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 Concessioning 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.

iii. Additional Land, Utilities and facilities.

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the Scope of Work at any time during the concession period, the Concessionaire may approach the Concessioning Authority for providing additional land, utilities and facilities. Concessioning Authority on being approached by Concessionaire with due justification of theadditional land, utilities, facilities requirement as applicable shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per Scope of Work. Even if authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient my Concessionaire for providing services as per Scope of Work.

iv. Reference to Adjudicatory Board

In the event of Project becoming a Stressed project, Concessioning Authority may make a reference to Adjudicatory Board, after its constitution as per Article 19.4 of this Agreement, for appraisal and review of the Project to suggest measures to revive the Project.

7.1(d) Rights of Concessioning Authority

i. If in the reasonable opinion of the Concessioning Authority, the Concessionaire is in material breach of its obligations under this Agreement for handling of cargo at the Project, the Concessioning Authority may, without prejudice to any of its rights under this Agreement including termination thereof, by notice require the Concessionaire to take reasonable measures for the handling of cargo.

ii. In the event that the Concessionaire, upon notice as per 7.1(d)(i) above fails to handle cargo at the Project as per Agreement within a reasonable period, the Concessioning Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed

necessary by it for handling of cargo at the Project, at the risk and cost of the Concessionaire and to recover any costs and expenses incurred by the Concessioning Authority in discharge of its obligations hereunder from the Concessionaire; provided that such taking over by the Concessioning Authority shall be of no greater scope and of no longer duration than is reasonably required.

iii. the Concessioning Authority has the right, to recover the costs specified in Clause 7.1 (d) directly from the Escrow Account as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Concessioning Authority under this Clause 7.1 d (iii) and debit the same to O&M Expenses.

7.2 Utilities and Services

The Concessioning 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 Concessioning Authority:

a) The required electric power shall be arranged by the Concessionaire from Calcutta Electric Supply Corporation Ltd. (CESC) or any other service provider. For this purpose, the Concessioning Authority shall issue required 'no objection' and all other required assistance. The Concessionaire shall be required to furnish appropriate Security Deposit to CESC Ltd. and sign / execute the appropriate agreement / formalities. Electricity charges will be at the applicable rates of the service provider.

b) Water shall be procured by the Concessionaire from the Budge Budge Municipality at his own cost. All necessary connections from the source to the project site will also have to be provided by the Concessionaire at his own expense.

c) Temporary water and electric supply may be available to the Concessionaire subject to availability, at its cost, and to the satisfaction of the Concessioning Authority, installmeters to measure the consumption of power and water. The Concessioning Authority does notwarranty the reliability, quality and quantity of water and power and shall not be liable in anymanner 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

a) In the event the Concessioning Authority, during operation period whether from the review of reports submitted by theConcessionaire in accordance with the provisions of this Agreement or otherwise, observes thatthe Project/Project Facilities and Services do not comply with the Performance Standards or fallshort of the Performance Standards, the Concessioning Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 14 of thisAgreement 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 theConcessionaire. Provided that on receipt of the demand the Concessionaire may make a writtenrepresentation to the Concessioning Authority which shall be considered by the ConcessioningAuthority on merits and the Concessioning Authority may waive the liquidated damages in part orfull, if it is satisfied that the Concessionaire has been carrying out its obligations diligently andefficiently and the shortfall to be waived was on account of reasons beyond the control of theConcessionaire. It is clarified that this provision does not prejudice the rights of the Concessioning Authority upona Concessionaire Event of Default as set out in Article 15 including the Concessioning Authority'sright to terminate this Agreement which shall remain unaffected.

ARTICLE 8

TARIFF

8.1 Applicable Tariff

Concessionaire shall fix the Tariff based on market conditions and on such other conditions, if any, as may be notified and made applicable by a competent authority, under the provisions of the MPA Act.

8.2 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 set by the Concessionaire as per Clause 8.1. The Concessionaire shall, subject to Clause 8.3 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.

8.3 Collection of Cesses and Charges

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

All Vessel related charges except berth / jetty Hire Charges against vessels berthed / double banked at the jetty shall accrue to the Concessioning Authority and the same will be collected by the Concessioning Authority.

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 Concessioning Authority Re 1 (the "**License Fee**").

b) The License Fee shall be due and payable in advance every year starting from [Date of Award of Concession or any other date specified by Concessioning Authority falling after Date of Award of Concession].

9.2 Payments of Royalty

a) The Concessionaire shall pay to the Concessioning Authority Royalty per Month equal to Rs.****** per MT of liquid cargo handled during the month. ("**the Royalty"**), provided if actual annual cargo handled is lesser than Minimum Guaranteed Cargo as per Clause 7.1 a (xii) the Minimum Guaranteed Cargo shall be considered for calculation of applicable Royalty and any shortfall in Royalty thus calculated shall be payable along with the Royalty payment of the lastmonth of the Financial Year. Royalty per MT shall be indexed to as per the variation of the Wholesale Price Index (WPI) (all commodities) occurring between January month of the year in which RFQ-Cum-RFP is submitted and January month of the relevant year and the adjusted royalty amount per MT shall be applicable from 1st April of the relevant year to 31st March of the following year. The Indexation of Royalty (in Rs per MT) to WPI shall be done every year till the end of the Concession Period.

Negative variation of the Wholesale Price Index will however be ignored and accordingly, the Royalty per MT payable in any year would not be lower than the Royalty per MT payable in the preceding year under any circumstances.

For example, in case the Wholesale Price Index (all commodities) prevailing on 1st January of the relevant year is lower than the Wholesale Price Index (all commodities) prevailing on the 1st January(WPI Month of December) of the preceding year, the Royalty per MT of cargo applicable from 1st April of the preceding year shall continue to be applicable from 1st April of the relevant year to 31st March of the following year.

The term 'relevant year' would mean the year against which the royalty per MT is calculated.

b) In case any discount or incentives are mandated by Government Authorities to be applicable on certain cargo types or nature of cargoes, the Royalty Payments for such cargo types handled by the Concessionaire shall be subjected to same level of discounts.
c) Royalty per MT of cargo will be indexed to as per the variations in the Wholesale Price Index (WPI) annually.
d) The Royalty for each Month shall be paid on or before the seventh Day of the immediately succeeding Month.
e) The payment of the Royalty shall commence from the Month in which the Concessionaire commences to provide any Project Facilities and Services and shall be irrespective of COD.
f) The Royalty amounts remaining unpaid on respective due dates would carry interest a rate equal to 3% above the Bank Rate per annum from the due date till the date of payment or realization thereof.
g) All taxes including GST applicable on Royalty shall be paid by Concessionaire to Concessioning Authority

9.3 Additional Utilities or Services

The Concessionaire shall also pay rent or other charges for any additional land (other than the Project Site / Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with Article 7.1(iii) as per the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be equal to 1.20 times prevailing Schedule of Rent for Land and prevailing Scale of Rates for utilities and services. The charges in case of additional land will be 1.20 times prevailing Schedule of Rent as applicable at the time of giving additional land, where the fees is paid on monthly / quarterly /half year/ yearly basis, it may also contain an escalation clause as per the provisions given under the Schedule of Rent at the time of giving such additional land but periodic review of Schedule of rent, if any will not be applicable after such allotment of additional land is made. The present rates applicable in respect of land, utilities and services are set out in Appendix 12.

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 Concessioning Authority a financial statement including quantity (MT) of cargo handled forevery 6 (six) monthly period ending 30th September and 31st March every year, duly certified by itsStatutory Auditors. The certificate must be furnished within 90 (Ninety) Days of the end of each suchperiod.

The Concessioning 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"**) and empaneled by CAG to conduct a special audit of the quantity (MT) of cargos handled and the financial statements, documents and supporting evidences thereto and compliances as may be mandated by or arising out of the Concession Agreement and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the quantity (MT) of cargohandled ("**Special Audit**").

In the event that the quantity (MT) of cargo/ TEUs handled 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 quantity (MT) of cargo handled reported by the Additional Auditor. The Concessionaire shall also pay interest @ 3% above the Bank Rate on the difference between the Royalty paid by the Concessionaire based on the quantity (MT) of cargo handled reported by the Statutory Auditor and that payable by the Concessionaire based on the quantity (MT) of cargo handled reportedby 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 SpecialAudit. Without prejudice to the aforesaid, if the difference between the quantity (MT) of cargo handled reported by the Additional Auditor and that reported by the Statutory Auditor is higher than[5]% the Concessioning Authority shall at its sole discretion have the right to require a Special Auditfor the entire outstanding tenure of the Concession.

9.5 Escrow Account

9.5.1 The Concessionaire shall, prior to the Date of Award of Concession, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.

9.5.2 The nature and scope of the Escrow Account are fully described in the agreement ("Escrow Agreement") to be entered into amongst the Concessionaire, the Concessioning Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Appendix 15.

9.5.3 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;

(b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;

(c) all Tariff collected by the Concessioning Authority in exercise of its rights under the Concession Agreement;

(d) all payments by the Concessioning Authority, after deduction of any outstanding License Fee and Royalty; and

(e) Termination Payment

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Documents

9.5.4 Withdrawals during Concession Period

At the beginning of every month post COD, 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, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

a) all taxes due and payable by the Concessionaire for and in respect of the Project;

b) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

c) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;

d) towards payment of Royalty to the Authority;

e) towards its debt service obligations under the Financing Documents;

f) towards payment of other sums payable to the Concessioning Authority and liquidated damages, if any;

g) towards any reserve requirements in accordance with the Financing Documents;

h) balance, if any, in accordance with the instructions of the Concessionaire

9.5.5 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

a) all taxes due and payable by the Concessionaire for and in respect of the Project;

b) 90% of Debt Due excluding subordinated debt;

c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioning Authority as due and payable to it by the Concessionaire;

d) outstanding debt service including the balance of Debt Due excluding subordinated debt;

e) outstanding subordinated debt;

f) incurred or accrued operation & maintenance expenses;

g) any other payments required to be made under this Agreement; and

h) balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under Sub-clause (h) of this Clause 9.5.5 until a Vesting Certificate has been issued by the Concessioning Authority under the provisions of Clause 18.5.

The provisions of this Article 9.5 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 9.5.5 have been discharged.

9.5.6 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period shall be appropriated in the following order of priority:

a) towards taxes and statutory dues payable by the Concessionaire;

b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;

c) all amounts due to the Concessioning 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:

   i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioning Authority;

   ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or

Concessioning Authority; and

iii) Vesting Certificate has been issued by the Concessioning Authority under the provisions of Clause 18.5.

ARTICLE 10
ASSETS: PERMITTED CHARGE

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

10.2 Permitted assignment and charges

The restraints set forth in Clause 10.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Concessioning Authority under this Agreement;
(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
(d) liens or encumbrances required by any Applicable Law

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 [●].

11.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the one (1) year after COD as also maintain their equity holding in the Concessionaire such that[27]:

a) Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of Pre-qualifications in response to RFQ-Cum-RFP shall hold less than 26% of such equity until expiry of one (1) year after COD and (ii) 5% (five per cent) of the Total Project Cost. At anytime, after expiry of the aforesaid share holding period, lead member can approach ConcessionAuthority for approval proposing a new entity/ consortium. Concession Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria asprescribed in Bid Document for the Project; and

b) M/s [●] ("**Lead Member"**) of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% of the Consortium's holding in the paid-up equity capital of the Concessionaire.

   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 favor of Senior 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 Concessioning 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 Concessioning 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, cess and charges including but not limited to income tax, GST, excise duty and customs duty 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 effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessioning Authority as a consequence of any act or omission of the Concessionaire. The Concessionaire shall procure that in each insurance policy, the Concessioning Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the Parties agree that the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues. The Concessionaire shall 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 Concessioning 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 Senior 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 Concessioning 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 Concessioning 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 Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ 3% above Bank Rate per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning 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 Concessioning 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.

vii. Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessioning Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

(d) Indemnification

i. The Concessionaire shall indemnify, defend, save and hold harmless the Concessioning Authority and its officers, servants, agents, Government Instrumentalities, Designated GOI Agencies and Concessioning Authority owned and/or controlled entities/enterprises, (the "Government Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Concessioning Authority or any User or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

ii. The Concessioning Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Concessioning Authority in the land comprised in the Site, and/or (b) breach by the Concessioning Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

(e) Engagement of Contractors

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability of 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 nonperformance 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 Concessioning Authority shall on request by the Concessionaire, assist in obtaining, if required, security clearance for the Contractor the Concessionaire intends to engage
iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning 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 arm's length basis.

(f) Condition Survey

i. The Concessionaire agrees that at least 6 (six)[28] Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Independent Engineer, 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 Concessioning 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 Concessioning 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. Deleted

g) Compliance to Green Ports policy

The Concessionaire shall comply with the measures set out in Appendix 20

12.2 Of the Concessioning Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

The Concessioning 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 Concessioning Authority.

(c) Competing Facilities

The Concessioning Authority shall not operationalise any additional facility within Port Limits for handling Liquid cargo either on its own or through any other Person until the earlier of (i) 5 (five)years from the Scheduled Completion Date ; or (ii) the average annual volume of cargohandled at the Project Facilities and Services reaches a level of 70% of Project Capacity for 2 (two)consecutive years ("Exclusivity Period"). Provided, this restriction shall not apply to the additional facility envisaged at the following project of SMPA:

(i) Setting up of Liquid Cargo Handling Jetty along with associate facilities at Shalukkhali, HDC, SMPA through PPP Mode.

(d) General rights of inspection and verification

The Concessioning Authority may during the pendency of the Agreement itself or by Independent Engineer verify the performance of obligations of the Concessionaire as set out in this Agreement.

12.3 Of the Concessioning Authority and the Concessionaire

(a) Monitoring Arrangement

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Appendix 17 "Monitoring Arrangement"

(b) Compliance with Laws and Regulations

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

(c) Rights to Documents

i. Concessioning Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioning Authority to the Concessionaire, shall always remain the property of the Concessioning 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 Concessioning Authority, be returned by the Concessionaire to the Concessioning 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 Concessioning 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 Concessioning Authority of the Senior Lenders' readiness to execute the same.

ARTICLE 13

CHANGE IN LAW AND CHANGE IN CARGO

13.1 Change in Law

13.1.1 "**Change in Law**" means the occurrence of any of the following after the Bid Date and having Adverse Impact as per the provisions of the Clause 13.1.2 (i):

a) the enactment of any new Indian law;

b) the repeal, modification or re-enactment of any existing Indian law or any international treaty to which Government of India is a signatory;

c) the commencement of any Indian law which has not entered into effect until the Bid Date;

d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

e) any change in the rates of any of the Taxes that have a direct effect on the Project;

13.1.2 The Remedy

i. If as a result of Change in Law, the Concessionaire suffers decrease in cargo traffic and reduction in revenue or an increase in costs or reduction in EBITDA or other financial burden, the aggregate financial effect of which results in either (a) reduction by more than 25% of EBITDA in the affected financial year as compared to the average EBITDA of the previous three financial years or from COD till occurrence of Change in Law in case the Project is operational for less than three years from COD and this is enduring in nature due to the effect of Change in Law or (b) an increase in the capital expenditure by more than 20% of the estimations before the occurrence of such Change in Law provided that such an increase in capital expenditure has been certified by the Senior Lender and the Independent Engineer, or (c) during construction period, the purpose for which the Project is being constructed becomes non permissible or unviable due to Change in Law (hereby (a), (b), (c) known as "**Adverse Impact**"), the Concessionaire may so notify the Concessioning Authority. Upon such notification, the Concessioning Authority and the Concessionaire shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and set up a Conciliation & Settlement Committee ("**Committee**");

ii. The Committee referred above shall conduct its proceedings in accordance with the provisions of Article 19 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 13.1.2;

iii. The Committee referred to in this Clause 13.1.2 shall conduct preliminary proceedings to satisfy itself that -

(a) A Change in Law has occurred, and this has a Adverse Impact on an enduring basis; and

(b) the Change in Law or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 13.1.2.

iv. Upon completion of the proceedings referred to in this Clause 13.1.2, the Committee may by a reasoned order make recommendations and setting out the terms of reference which shall be:

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Change in Law so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in reduction in EBIDTA or increase in capital expenditure as described in 13.1.2 (i);

(c) of no greater duration than is necessary for mitigating the effects of the Change in Law; and

(d) quantified and restricted in terms of relief or remedy and may include extension of Concession Period or change in cargo as per the provisions of Article 13.2 or both, as the case may be, subject to such extension in the Concession Period is limited to a maximum of [10(ten)] years, or any other remedy as it deem appropriate but shall not include any recommendation of any financial compensation by the Concessioning Authority to the Concessionaire.

(e) Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 13.1.2

v. the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Change in Law and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “MoU”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

vi. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19. For the avoidance of doubt, it is agreed that this Clause 13.1.2 shall be restricted to changes in law directly affecting the Concessionaire’s costs or EBITDA or capital expenditure of performing its obligations under this Agreement.

13.2 Change in Cargo

13.2.1 Change of Cargo and business plan due to Change in Law

(i) If as a result of Change in Law, the Concessionaire is unable to continue to handle the Cargo for which the Concession was originally awarded, the Concessionaire may so notify the Concessioning Authority. Upon such notification, the Concessioning Authority and the Concessionaire shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and the Committee would assess the aggregate financial effect on the Concessionaire and propose remedies as per the business revival plan (as detailed under Article 13.2.2 (v)) including but not limited to an appropriate extension of the Concession Period and/or the new cargo that the Concessionaire may handle. For avoidance of doubt, it is hereby clarified that any such extension, if applicable, in the Concession Period shall be limited to a maximum of [10 (ten)] years.
(ii) Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19.

13.2.2 Change in Cargo and business plan due to Unforeseen Events

i. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs or EBITDA or capital expenditure or revenues of the Project. Within 30 (thirty) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 13.2.2
ii. Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to the Committee For avoidance of doubt, under this provision, it is hereby clarified that the Independent Engineer shall also be a mandatory member of the Committee.
iii. Before setting up the Committee, the Concessioning Authority shall conduct an impartial and fair 'performance assessment study' preferably through a third party to *inter alia* assess (a) whether the concessionaire has fulfilled its commitments to perform operations of the terminal in a professional manner, (b) whether there are reasons to show 'poor performance' on the part of the concessionaire as per Performance Standards set out in Appendix 14, and (c) whether the status of the project being handled by the concessionaire is already stressed due to reasons

other than Unforeseen Event such as financial hardships faced by the concessionaire due to lack of funding, disputes amongst concessionaire consortium members, disputes of concessionaire with 3rd parties such as contractors and other such reasons.

iv. The Committee referred to in this Clause 13.2.2(iii) shall conduct preliminary proceedings to satisfy itself that -

(a) an Unforeseen Event has occurred and has an Adverse Impact as defined in Article 13 and which is enduring in nature;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 13.2.2.

v. Upon completion of the negotiating proceedings referred to in this Clause 13.2.2, the Committee may undertake or cause to undertake a business revival plan to assess and recommend:

(a) The business revival plan with the recommendation of handling of new cargo;

(b) Provide recommendation on the viability of the business revival plan after a holistic consideration of all possible risks and rewards to all the stakeholders including but not limited to the Concessioning Authority, Concessionaire, Senior Lenders and Users including but not limited to impact on/of competition at the Port. For avoidance if doubt, it is hereby clarified that in case the business revival plan involves infusion of additional debt, the lenders may have to endorse the business revival plan and provide the same in writing to the Committee;

(c) If applicable and accepted by the Concessioning Authority, the new Royalty or the Minimum Guaranteed Traffic from the Concessionaire to the Concessioning Authority;

(d) Any other remedies what-so-ever, as mutually agreed by both Parties.

It is hereby clarified that while undertaking the exercise for business revival plan, Committee may make its recommendations:

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;

(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) based on appropriate due diligence such that there is Concessioning Authority is not subject to undue risks

vi. The provisions of this Clause 13.2.2 shall be applicable only after 7 (seven) years from COD (vi)Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 13.2.2(v), the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the "MoU") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

vii. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19.

13.2.3 Impact of Change in Cargo on the Termination Payment

i. Upon allowing changes in cargo as per the provisions of Clause 13.2.2, the Concessionaire shall be required to submit revised masterplan highlighting the financial impact of procurement of movable and non-movable assets due to change in cargo within 60 (sixty) days of Concessioning Authority agreeing to Concessionaire's request for change in cargo as per the provisions of this Clause 13.2

ii. The Independent Engineer shall study the revised masterplan and provide its inputs on optimization of capital expenditure and its independent assessment of the type and quantity of existing movable assets which may become redundant due to the impact of change in cargo within 15 (fifteen) days of receipt of the revised masterplan and other relevant inputs from the Concessionaire.

iii. The Concessioning Authority along with the Senior Lender, if the Senior Lender so wishes, shall appoint a certified asset valuer who shall estimate the residual market value of the redundant movable assets as identified by the Independent Engineer under the provisions of Clause 13.2.3 (ii)

iv. The Concessioning Authority shall determine the value of the redundant movable assets ("**Residual Asset Value**") as the higher of:

i. The book value of such assets as per the books of accounts and certified by the Statutory Auditors of the Concessionaire; and

ii. The residual market value assessed by the certified asset value as per provisions of Clause 13.2.3 (iii).

v. The Concessioning Authority shall deduct 70% of the Residual Asset Value from the Debt Due and remaining 30% of the Residual Asset Value from the Adjusted Equity, if applicable, from the Termination Payment.

vi. For avoidance of doubt, it is hereby clarified that the Concessionaire would be free to remove such redundant movable assets from the Project Site.

For avoidance of doubt and for the sake of clarity, the remedy under this Article 13 shall be available on a case- to- case basis only subject to approval by the Committee and the remedy allowed in one Project shall not be applicable to other Projects as a matter of right or precedent, unless such remedy is applicable to the Project in question based on facts, circumstances and the business revival plan of the Concessionaire and is approved by the Committee for that Project.

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, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event:

a) is beyond the reasonable control of the Affected Party
b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
c) prevents the Affected Party from performing or discharging its obligations under this Agreement and thereby has Material Adverse Effect on the Affected Party

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 Adverse Impact;
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 Scope of Work , Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency 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 Concessioning 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 Tariff by the Concessionaire;
d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any

proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

b) The Notice shall inter-alia include full particulars of:

   i. the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

   ii. the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

   iii. the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

   iv. any other relevant information.

c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

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

a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

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

14.8 Performance Excused

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

14.9 Costs, Revised Timetable

14.9.1 Costs

(a) Upon occurrence of any Force Majeure Event prior to the Date of Award of Concession, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

(b) Upon occurrence of a Force Majeure Event after the Date of Award of Concession, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

i. upon occurrence of a Non-Political Event, the Pates shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

ii. upon occurrence of an Other Event, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Concessioning Authority to the Concessionaire; and

iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event

shall be reimbursed by the Concessioning Authority to the Concessionaire. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues from Tariff or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

Save and except as expressly provided in this Article 14.9.1, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto

14.9.2 Extension of time/period

(a) Upon the occurrence of any Force Majeure Event prior to the Date of Award of Concession, the period set forth in Clause 3.2 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

(b) At any time after the Date of Award of Concession, if any Force Majeure Event occurs:

i. before COD the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

ii. after COD whereupon the Concessionaire is unable to collect Tariff despite making best efforts or it is directed by the Concessioning Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Tariff on account thereof; provided that in the event of reduction in collection of Tariff on account of partial inability or suspension, as the case may be, which causes the daily collection to decline below 90% of the Average Daily Tariff, the Concessioning Authority shall extend the Concession Period in proportion to the loss of Tariff on a daily basis. For the avoidance of doubt, loss of 25% in collection of Tariff as compared to the Average Daily Tariff for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period

14.10 Termination Due to Force Majeure Event

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

are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) Days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

ARTICLE 15

EVENTS OF DEFAULT

15.1 Events of Default

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

(a) The Concessionaire Event of Default

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

i. the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
ii. construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
iii. a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the COD I is delayed for more than 180 (one hundred and eighty) Days from the Scheduled 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 O&M Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
vii. the Concessionaire fails to achieve Minimum Guaranteed Cargo for a consecutive period of 3 (three) years.
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 jurisdictionin proceedings for winding up or any other legal proceedings;

xi. occurrence of default under the Financing Documents pursuant to which the Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

xii. levy of an execution or restraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days

xiii. the Performance Guarantee is not maintained in terms of the provisions hereof;

xiv. the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

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 Concessioning Authority Event of Default

i. the Concessioning 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 Concessioning 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 Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

iv. levy of an execution or restraint on the Port's Assets in any proceedings against the Concessioning 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 restraint 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 Concessioning 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 Concessioning 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 Senior 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 Senior 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 Concessioning Authority shall in consultation with the Senior 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 Senior 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 Senior Lenders' charge on the Concessionaire's assets;

v. acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and

vi. payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

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

15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Senior 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 Senior Lenders have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8 Concessioning Authority's Rights of Step-in

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

a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;
c) step in and succeed upon election by Concessioning Authority without the necessity of

any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts. Provided, that in such circumstances, the Concessioning Authority shall assume the obligations of the Concessionaire, either by itself or through an operation and maintenance contractor appointed in consultation with the Senior Lenders, with respect to the Senior Lenders during such Remedial Period out of the cashflows of the project. Provided further, the Concessionaire acknowledges that any payments made by the Concessioning Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioning Authority to the Concessionaire in terms of the provisions of this Agreement.

ARTICLE 16

TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default having Material Adverse Effect shall do so by issue of a notice in writing (**"Termination Notice"**) to the other Party and simultaneously deliver a copy thereof to the Senior 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 Termination Payment is payable by the Concessioning Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioning Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely Termination Payment payable by the Concessioning 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 Concessioning Authority.

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

(b) data or records [to be specified by Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 takeover of the same by the Concessioning Authority on the Transfer Date.

b) If, as a result of the condition survey, the Concessioning 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 Concessioning Authority may itself cause the condition survey and inventory of Port's Assets and the Project Facilities and Services to be conducted. The Concessioning 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 Concessioning Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessioning Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the Termination Payment payable to the Concessionaire in accordance with Article 17 in the Escrow Account, the Concessioning Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Site/Port Assets/Project Facilities & Services by the Concessionaire to the Concessioning 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, Termination Payment payable to the Concessionaire shall be 90% of the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

ii. If the termination is due to an Other Event, Termination Payment payable to the Concessionaire shall be aggregate of:
   (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due;
   (b) 110% of the Adjusted Equity; and
   (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in computation of the amount payable hereunder.

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

Provided, no Termination Payment 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

i. If the termination is after the COD of the Project, due to a Concessionaire Event of Default, theTermination Payment payable by the Concessioning Authority to the Concessionaireshall be an amount equal to:
   a. 90% of the Debt Due less Insurance Cover; and
   b. 70% of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD , save and except as provided in Clause 17.1 (b) (ii).

ii. Upon termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% of the Total Project Cost and in the event of expenditure exceeding such 30% and forming part of Debt Due, the provisions of Clause 17.1(a)(i) shall, to the extent applicableto Debt Due, apply in respect of the expenditure exceeding such 30%. For the avoidance ofdoubt and by way of illustration, the Parties agree that if the total expenditure incurred prior totermination is 90% of the Total Project Cost, the expenditure eligible for computation ofTermination Payment hereunder shall be 60% of the Total Project Cost and the TerminationPayment due and payable in such event shall not exceed 54% of the Total Project Cost or90% of the Debt Due.

Provided, no Termination Payment 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 Concessioning Authority Event of Default

If the termination is due to a Concessioning Authority Event of Default, the Termination Payment payable by the Concessioning Authority shall be equal to the aggregate of:

(i) Debt Due less Insurance Cover;

(ii) 150% of the Adjusted Equity; and

(iii) 115% of the amount representing the Additional Termination Payment

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 Concessioning Authority in the event of termination due to a Concessioning 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 Senior Lenders

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

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Senior 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 Concessioning 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 Senior Lenders is furnished by the Concessionaire to the Concessioning Authority, the Termination Payment shall be paid by the Concessioning Authority to the Concessionaire directly.

17.5 Delayed Payment of Compensation

Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay for reasons other than those attributable to the Concessionaire, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days.

For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of Termination Payment in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioning 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 Concessioning Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioning Authority the Tariff collected and other revenues derived from the Project 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 Concessioning 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, or from COD till Transfer date in case the Project is terminated less than three years from COD. 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 Concessioning Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Concessioning Authority is delayed for reasons attributable to the Concessioning Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioning 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.

17.8 Additional Termination Payment

Payment due and payable in respect of Specified Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD but no later than the 20th (twentieth) anniversary of the Date of Award of Concession, shall be limited to the lowest of:

1. Adjusted Depreciated Value thereof;
2. the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Concessioning Authority, within 15 (fifteen) days of termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
3. 40% of Total Project Cost

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 Concessioning Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;
e) transfer or cause to be transferred to the Concessioning Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessioning Authority; and (iii) those the Concessioning Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioning Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessioning 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 Concessioning Authority;
f) at its cost, transfer to the Concessioning Authority all such Applicable Permits which the Concessioning Authority may require, and which can be legally transferred. Provided if the

termination is on account of Concessioning Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioning 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 Concessioning Authority in terms of the provisions of this Agreement.

18.3 Concessioning Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessioning Authority shall pay Termination Payment payable to the Concessionaire in accordance with Article 17.1 of this Agreement, to the Senior Lenders, or deposit the same in the Escrow Account or on the written instructions of the Senior 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 Concessioning 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 Senior Lenders on any of the assets shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge.

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

18.4 Risk

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

18.5 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the obligations under Clause 18.2 and 18.3 hereinabove have been fulfilled, and the Concessioning Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Appendix 23 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and

their vesting in the Concessioning Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the obligations under Clause 18.2 and 18.3 shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessioning Authority or its nominee on, or in respect of, the Project on the footing that all obligations under Clause 18.2 have been complied with by the Concessionaire.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessioning 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, 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 Conciliation

In case any dispute is not resolved amicably as provided in Clause 19.1, the Concessionaire may agree to refer the matter to conciliation & settlement Committee established by the Concessioning Authority ("**Conciliation & Settlement Committee")** as per provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 1996 (26 of 1996) as amended from time to time. The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Concessioning Authority on the subject, which shall bein alignment with the provisions contained in Sections 63 and 64 of the Arbitration & Conciliation (Amendment) Act,1996(26 0f 1996) as amended from time to time. In case the recommendations/decision of the committee is not acceptable tothe Concessionaire, it shall be free to refer the dispute to arbitration in accordance with the provisionsof Clause 19.4 or 19.5.

19.3 Arbitration

19.3.1 Any Dispute which is not resolved amicably as provided in Clause 19.1 and/or 19.3 shall be finally settled by arbitration as set forth below: -

i. The Dispute shall be referred to the Society for Affordable Redressal of Disputes - Ports (hereinafter called as SAROD - Ports). The dispute shall be dealt with in terms of Rules of SAROD - Ports. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD - Ports and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.

ii. The constitution of Arbitral Tribunal, code of conduct for Arbitrators and fees and expenses of SAROD - Ports and Arbitral Tribunal shall also be governed by the Rules of SAROD - Ports as amended from time to time. The rules of SAROD – Ports are placed at Appendix-21

iii. The seat of Arbitration shall be New Delhi, or a place selected by the Governing Body of SAROD - Ports and the language for all documents and communications between the parties shall be English.

iv. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

19.3.2 Any Award made in any arbitration held pursuant to the Article 19 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

19.3.3 The Concessionaire and the Concessioning Authority agree that an Award may be enforced against the Concessionaire or the Concessioning Authority, as the case may be, and their respective assets wherever situated.

19.3.4 In the event that the Party against whom the Award has been granted, challenges the Award for any reason in a Court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim relief as per the provisions of the Arbitration and Conciliation Act or rules made thereunder. The Parties acknowledge and agree that the Arbitration proceedings shall be video recorded and one copy each of the video recording shall be provided to both the parties.

19.4. Adjudication by Adjudicatory Board

In the event of constitution of a statutory Adjudicatory Board or such other forum with powers to receive and adjudicate upon disputes between the Concessionaire and the Concessioning Authority, all disputes not settled under Clause 19.2 through conciliation, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the parties in accordance with the applicable laws. For avoidance of doubt, parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the parties cannot refer the dispute, difference or controversy of whatsoever nature again under Clause 19.3 and the adjudication hereunder shall be final and binding.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning 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 Concessioning Authority

The Concessioning 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 Concessioning 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 is KODS which is a local datum and is 2.365 meter below Mean Sea Level.

21.2 Accounts And Audits

21.2.1 Audited accounts

a) The Concessionaire shall maintain books of accounts recording all its receipts (including all Tariff collected and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow Statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Concessioning Authority shall have the right either through itself or through any of its authorised representatives, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Concessioning Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

b) The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessioning Authority its unaudited financial results in respect of the preceding quarter, giving summarised information on the cargo types handled and liable for payment of Tariff therefore, and any other information, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly result by the Companies listed on a stock exchange.

c) On or before the 30th day of June each year, the Concessionaire shall provide to the Concessioning Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the cargo traffic and liable for payment

of Tariff therefore, (b) Tariff charged and received, and other revenues derived from the Project and any other assets associated with the Project and earned directly by the Concessionaire (c) such other information as the Concessioning Authority may reasonably require.

21.2.2 Appointment of auditors

a) The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants ("Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Appendix 22. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
b) The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Concessioning Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
c) Notwithstanding anything to the contrary contained in this Agreement, the Concessioning Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
d) The Concessioning Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "Concurrent Auditors") from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire's accounts.

21.2.3 Certification of claims by Statutory Auditors

a) Any claim or document provided by the Concessionaire to the Concessioning Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of License Fee as per Clause 9.1.

21.2.4 Set-off

a) In the event any amount is due and payable by the Concessioning Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the

balance remaining. Any exercise by the Concessioning Authority of its rights under this Clause 21.2.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

21.2.5 Dispute resolution

a) In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors hall meet to resolve the differences and if they are unable to resolve the same, such dispute shall be resolved by the Concessioning Authority by recourse to the dispute resolution procedure as described in Article 19.

21.3 Compensation for breach of agreement

21.3.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 21.3.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Concessioning Authority by way of compensation, all direct costs suffered or incurred by the Concessioning Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no compensation shall be payable under this Clause 21.3.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessioning Authority.

21.3.2 Compensation for default by the Concessioning Authority

Subject to the provisions of Clause 21.3.5, in the event of the Concessioning Authority being in material breach or default of this Agreement at any time after the Date of Award of Concession, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no such compensation shall be payable for any material breach or default in respect of which damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of revenues from Tariff or debt repayment obligations or other consequential losses, and for determining such compensation,

information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

21.3.3 Extension of Concession Period

Subject to the provisions of Clause 21.3.5, in the event that a material breach or default of this Agreement set forth in Clause 21.3.2 causes delay in achieving COD or leads to suspension of or reduction in realisation of Tariff, as the case may be, the Concessioning Authority shall, in addition to payment of compensation under Clause 21.3.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Concessioning Authority at such time. The decision of the Concessioning Authority in this matter shall be final and binding.

21.3.4 Compensation to be in addition

Compensation payable under this Clause 21.3 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including termination thereof.

21.3.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

21.4 Survival of Obligation

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.

21.5 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.

21.6 Joint Responsibility

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Concessioning 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.

21.7 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.

21.8 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.

21.9 Notices

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

The Concessioning Authority:
CHAIRMAN
SYMA Prasad Mookerjee Port
15,Strand Road,Kolkata-1
West Bengal———————————
Fax No: _____
Email: _____

The Concessionaire:
The MANAGING DIRECTOR
————————————————Ltd
_____
_____
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.

21.10 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 21.9 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.

21.11 Amendments, Modifications or Alterations.

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

21.12 Governing Law

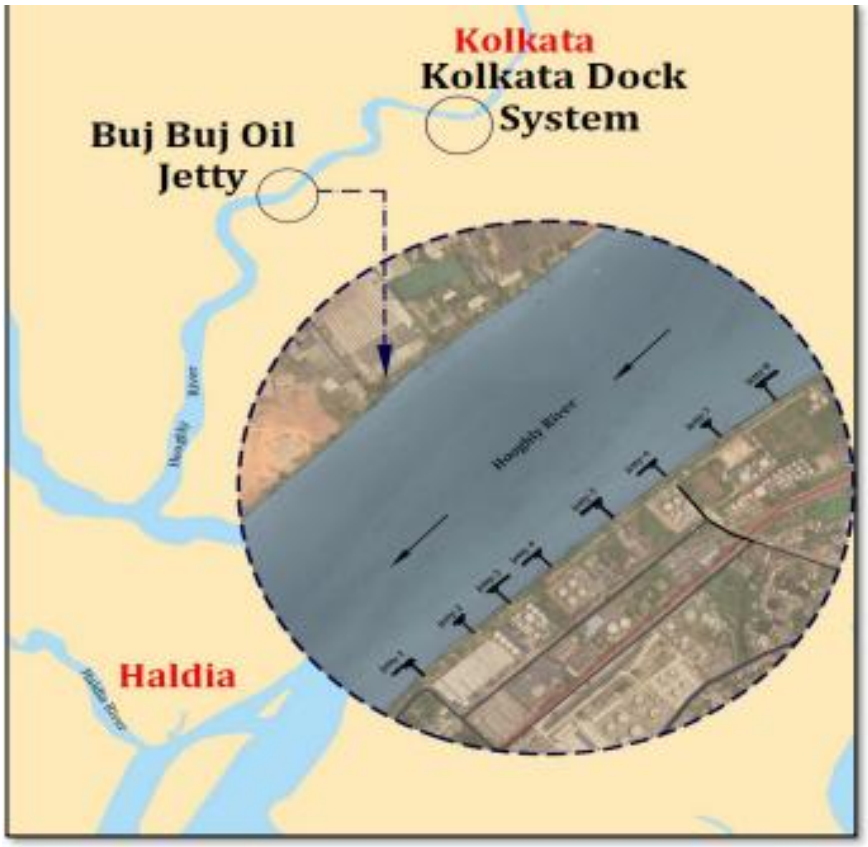
This Agreement shall be governed by and construed in accordance with the laws of the Republic of India and High court of Calcutta having territorial jurisdiction over the Project shall have exclusive jurisdiction over allmatters relating to or arising out of this Agreement.

21.13 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 Concessioning Authority is affixed pursuant to its resolution dated _____
of the Board in the presence of Mr. _____
_____who has signed this Agreement in token thereof.
Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. _____ pursuant to Resolution dated _____of its Board of Directors.

APPENDIX 1

PROJECT SITE



The geographical coordinates of Budge Budge are at 22°29'7.48"N latitude & 88°10'36.50"E longitude. Budge Budge is city in Kolkata and is situated in the eastern bank of Hoogly River. Budge Budge jetties are located at about 25 km downstream of KDS on Hooghly River and 100 Km upstream of Sand heads. As we move upstream from Sandheads, Budge Budge is the first location, wherein the river width is narrow and due to which the water depth in Budge Budge River stretch is more.

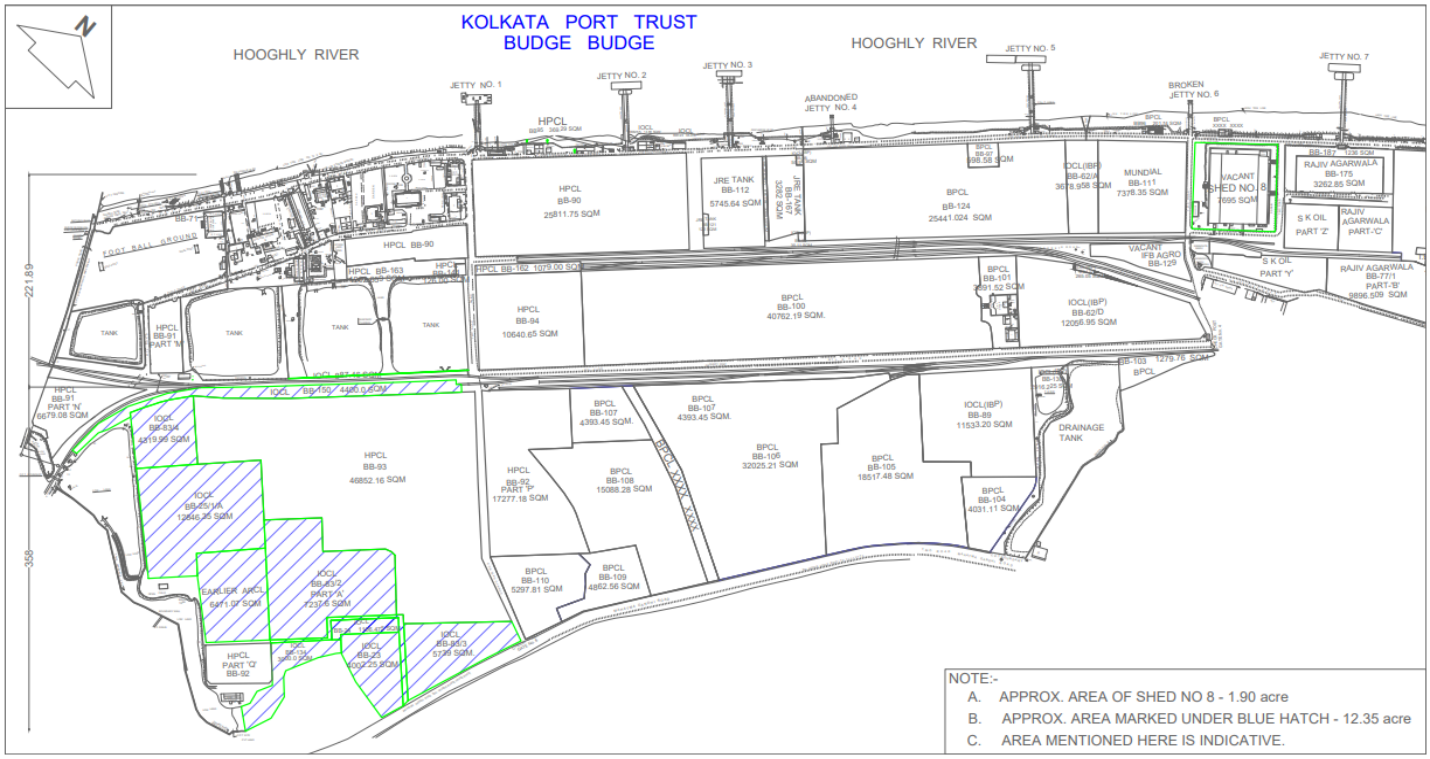
APPENDIX 2

PORT'S ASSETS

1) Total Area being utilized for the project : An area of 1.9 acres (as mentioned at Note: A of Lay Out) adjacent to the Jetty and additional 12.35 acre (as mentioned at Note: B of Lay Out) area may be available at the rate of 1.2 times of SOR. The layout of the same provided below.

2) Water front in Budge Budge Hooghly river for development outer terminal berths;

Notes: The area proposed to be allotted to the Concessionaire is only indicative. However, marginal adjustments in the area will be made depending on the actual site conditions. The area to be handed over to the Concessionaire will be jointly surveyed by the representatives of the Concessioning Authority and Concessionaire. An indicative layout is given as follows:



APPENDIX 3

SUBSTITUTION AGREEMENT

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

AMONGST,

THE Board of Authorities Syma Prasad Mookerjee Port, a permanent body having perpetual succession and a common seal constituted under the provisions of the MajorPort Authorities Act, 2021 and having its Administrative Office at #15, Strand Road, Kolkata-700001 (hereinafter referred to as **"the Concessioning 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, 2013 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 0ffice/Head Office at -------- ---------- hereinafter referred to as **"the** Senior **Lender"**.

OR

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

WHEREAS,

a) The Concessioning 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 Concessioning 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 Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Senior Lender/s/Senior 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 Senior 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 there under by the Concessionaire for a minimum period of 3 (three) months.

"Senior **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 Senior 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 Senior Lender/Senior Lender's Representative pursuant to this Agreement and approved by the Concessioning Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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

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 Senior 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 Senior 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 Senior 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 Concessioning Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Selectee selected by the Senior Lenders in accordance with this Agreement (For the avoidance of doubt, the Senior 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 Senior Lenders/Senior Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof and send a copy to the Concessioning 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 Senior Lenders/Senior 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 Senior Lenders/Senior Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioning 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 Concessioning 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 Concessioning 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 Senior Lenders/Senior Lenders' Representative and the Concessionaire, the Concessioning 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 Concessioning Authority shall by a notice inform the Senior Lenders/Senior Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days' time to the Senior Lenders/Senior Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

3.3.2 In the event that the Senior Lenders/ Senior Lenders' Representative makes a representation to the Concessioning 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 Senior Lenders/ Senior 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 Concessioning 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 Senior Lenders/ Senior Lenders' Representative and the Concessionaire, the Concessioning 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 Concessioning Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioning Authority under Clause 3.3.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior 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 Concessioning Authority for shortlisting the bidders for award of the Concession; provided that the Senior Lenders/ Senior Lenders'

Representative may represent to the Concessioning Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioning 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 Senior Lenders/Senior Lenders' Representative shall request the Concessioning 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 Concessioning 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 Senior Lenders/Senior Lenders' Representative, give a reasoned order after hearing the Senior Lenders/Senior Lenders' Representative. If no such objection is raised by the Concessioning Authority, the Selectee shall be deemed to have been accepted. The Concessioning 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 Concessioning Authority, the Senior 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 Senior Lenders/Senior Lenders' Representative and the Concessioning 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 Senior Lenders' Representative or the Senior Lenders or the Concessioning Authority taken pursuant to this Agreement including the transfer/novation of the Concession Agreement in favour of the Selectee. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Senior Lenders/Senior Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioning Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioning Authority or the Senior Lenders/Senior Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Senior Lenders/Senior 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 Senior Lenders/Senior Lenders' Representative may by a notice in writing require the Concessioning Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioning Authority shall terminate the Concession in accordance with the Concession Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessioning Authority is selected and recommended by the Senior Lenders/Senior 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 Concessioning Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessioning Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Senior 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 Senior Lenders, under the Financing Documents.

ARTICLE 7

INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioning Authority and the Senior Lenders/Senior 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 Concessioning 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 Concessioning 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 Concessioning Authority.

7.1.3 The Senior Lenders/Senior 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 Senior Lenders/Senior 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 Senior Lenders/Senior 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 "Senior Lender" and the "Senior 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 Senior Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Senior 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 Senior Lenders/Senior 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 Senior Lenders' Representative under this Agreement shall always be deemed as consultation, recommendation or approval of every concerned Senior Lender and each such Senior 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 Senior Lender(s) or the Senior 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 Senior 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 SENIOR LENDERS SETFORTH IN SCHEDULE I

BY : _____

Name:

APPENDIX 4

SCOPE OF WORK

The Project envisages Development of Concrete Jetty for Handling Liquid Cargo at Budge Budge, Kolkata on Design, Build, Finance, Operate and Transfer (DBFOT) mode.

Project Facilities and Services:

The Project involves the pre-project activities such as field investigations and surveys, planning and detailing design of terminal facilities ,construction of jetty with accessories ,installation of top side facilities such as marine unloading arms ,flexible hoses, jetty head pipe manifold with header, jetty infrastructure such as fire fighting system and pollution control. The scope of the work will broadly include planning, design, engineering, supply & installation, operation & mainataince of all the facilities required for the project to handle the stipulated traffic. Major Components of the Project are indicated in the following paragraphs. All facilities shall comply with the Indian Standards or relevant international standards. The required construction, operation, maintaiance and safety standards are annexed to this appendix. Safety precautions as per the Statutory requirement shall be complied with Project requirement also includes the Compliance of Quality ,Environment, Occupational Health, Safety and ISPS Code.

Types of Vessel :

Vessel: 1st Generation container vessel

LOA: 100 m to 190m

Beam: 16m to 26.2 m

Draft: 6.1m to 8.5m

DWT: 5,000 DWT to 35000DWT

Capacity: 4500 MT to 15000MT

i. On the COD , the berth / jetty shall be equipped with equipment with capacity to handle 1.125 MTPA of Liquid cargo. The details of Project Facilities and equipment's are given below:

The indicative details of Project Component wise breakup is given below:

Construction period of 24 (Twenty Four) months

Sl. No.	Particulars Details/Description
A1	**Jetty Development**
A1.1	(Service Platform: 25m x 15 m, Breasting Dolphins: 15M x 10M: 4 Nos, Mooring Dolphins: 15 x 15 m: 4 Nos.)
A1.2	Steel catwalk for Connecting Dolphins (length about 100 m x 2 m)
A4	**Approach Trestle + Elevated platform for pipe rack up to landfall point**
A4.1	Pipe Rack on Approach Trestle upto landfall point
A5	**Common User Facility (CUF)**
A5.1	Land development
A5.2	Development of Maintenance Building
A5.3	Development of Admin Building
A5.4	Trestle and platform for pump house
A5.5	Development of Common Fire Fighting Pump House at the Common User Facility
A5.6	Construction of Security Room
A5.7	Sub station Building
A5.8	Boundary Wall
B1	**Equipment on the Jetty**
B1.1	Marine Hose / Flexible manifold, 10" for Edible Oil handling including supplying, erection & commissioning, Spares for 1 year, warranty for 3 years. Providing 7 days training & all required Brochure, Operation Maintenance Manual. – 01 no.
B1.2	Marine Hose / Flexible manifold, 10" for handling Chemicals / acids including supplying, erection & commissioning, Spares for 1 year, warranty for 3 years. Providing 7 days training & all required Brochure, Operation Maintenance Manual.- 01 no.
B1.3	Ball Valve with Motor Operated Valve (MOV) - 18" POL and Edible oil services including Supply, Installation, commissioning. – 04 nos
B1.4	CS / SS Pipeline - 300 mm including Supply, Installation, commissioning
B1.5	Non Returning Valve (NRV) - 12" including Supply, Installation, commissioning. – 04 nos

B1.6	Emergency shutdown valve including Supply, Installation, commissioning. – 04 nos
B1.7	Pig Launcher with all fittings including Supply, Installation, commissioning for POL services. – 04 nos
B1.8	FIRE FIGHTING FACILITY AT JETTY- Supply , installation, commissioning of required , FW pump-(M), Jockey Pumps, Foam Tanks, API Grade B Pipelines, valves, Non Return Valves, Tower Monitor with accessories, High Volume Long Range (HVLR) monitor, hydrant for firefighting, Pipe Supports on jetty etc. all complete.
B2	**Equipments on the Approach Trestle**
B2.1	Pipeline POL services including Supply, Installation, commissioning
B2.3	Supply, Installation, commissioning of Nitrogen Line - for pigging operations of POL pipelines.
B2.4	Supply, Installation, commissioning of Air Pipeline
B2.5	Supply, Installation, commissioning of Water Pipeline
B2.6	Supply, Installation, commissioning of Bunkering Pipeline
B3	**Common user facility**
B3.1	Supply , installation, commissioning of required , FW pump-(M), Jockey Pumps, Foam Tanks, API Grade B Pipelines, valves, Non Return Valves, Tower Monitor with accessories, High Volume Long Range (HVLR) monitor, hydrant for firefighting, Pipe Supports on jetty etc. all complete.
B3.2	FIREFIGHTING FACILITY IN CUF FW tanks, Foam Tanks, Air Compressor, Regenerative Air Dryers, Air Receivers, PSA Units, Nitrogen Receiver, Pipelines, Valves, Portable Extinguishers etc.
C	**Electrical Works**
C1.1	Installation of sub-station including distribution
C1.2	Electrical and Instrumentation works for Jetty and Trestle
C1.3	Electrical and Instrumentation works for Common User Facility (CUF)
C1.3	Illumination and lighting system

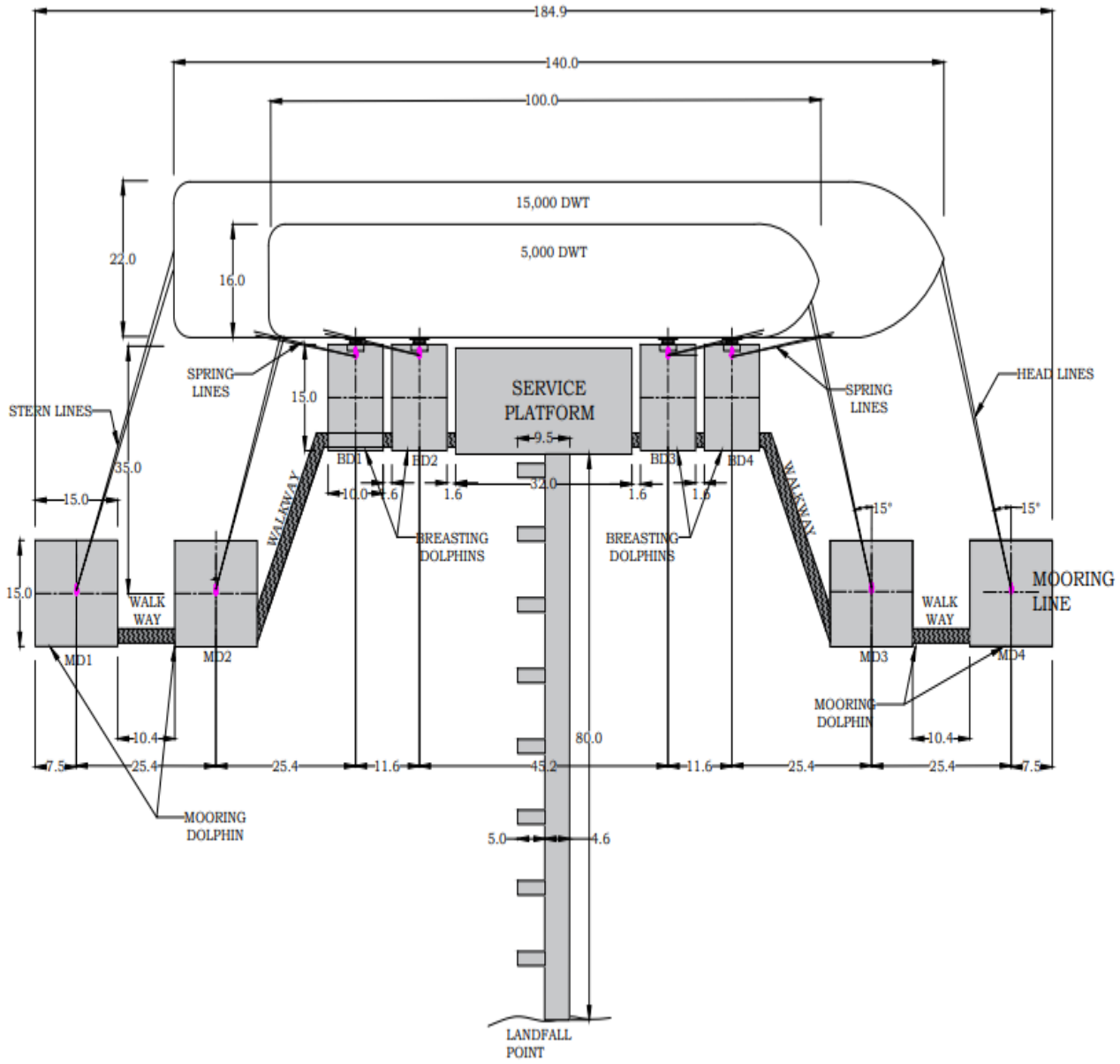
The Project is envisaged to be implemented in single phase as mentioned above. During the construction of the concrete jetty, the cargo handling operations shall be done through the existing jetties 1, 2, 3 and 8 and partly through jetty 5..

The scope of work will broadly include designing, building berths and equipping Berths for the operation and maintenance thereof. The Berths shall be handed over to the Concessionaire on the date of Award of Concession. In this stage, post signing the concession agreement and hand over of the site, shall initiate the work with detail designs and establishment of temporary facilities at Project site. The main components for construction of concrete jetty for liquid cargo handling at Budge Budge comprises of construction of jetty & approach trestle, procurement of equipment for cargo handling, development of common manifold area, development of admin, operational buildings, development of other utilities and firefighting facilities The details of activities are depicted in Project implementation schedule of the In this stage, post signing the concession agreement and hand over of the site, shall initiate the work with detail designs and establishment of temporary facilities at Project site . The main components for construction of concrete jetty for liquid cargo handling at Budge Budge comprises of construction of jetty & approach trestle, procurement of equipment for cargo handling, development of common manifold area, development of admin, operational buildings, development of other utilities and firefighting facilities as required and as stipulated in the Techno economic feasibility report for this Project

ii. Others

The personnel and other related facilities should be capable of handling liquid cargo in accordance with the Performance Standards set out in Appendix 14. The general arrangement for Jetty are given below:

General Arrangement Drawing for Jetty



Design Vessel	Type of vessel	Vessel Size (DWT)	Parcel Size (MT)	LoA (m)	Beam (m)	Draft (m)
Average	Tanker	15,000	12,000	140	22.5	8.4
Minimum	Tanker	5,000	4,500	100	16	6.1

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 the Scope of Work.]

A. General

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

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

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

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

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

B. Civil Construction Work

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

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

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

Indian Standards for Construction of Ports and Harbours

IS 4651 – Part – 1 – 1974 Code of practice for planning and design of ports and harbours: Part 1 Site investigation

IS 4651–Part 2–1989 Code of practice for planning and design of ports and harbours Part 2 Earth pressure

IS 4651-Part III-1974 Code of practice for planning and design of ports and harbours: Part III: Loading

IS 4651- Part 4 -1989 Code of practice for planning and design of ports and harbours: Part 4: General Design consideration.

IS 4651-Part 5-1980:

IS7314: 1974

IS 9527: Part 1: 1981

IS 9527: Part 3: 1983

IS 9527: Part 4: 1980

IS 9527: Part 6: 1989

IS 10020: Part 4: 1981

IS 9556: 1980

Code of practice for planning and design of ports and harbour Part:5 Layout and functional requirements

Glossary of terms relating to port and harbour engineering

Code of practice for design and construction of port and harbour structures: Part 1 Concrete monoliths Code of practice for design and construction of port and harbour structure: Part 3 Sheet pile walls

Code of practice for design and construction of port and harbour structure: Part 4 Cellular Sheet pile structures

Code of practice for design and construction of port and harbour structures: Part 6 Block work Recommendations for design and construction of port and harbour components Part 4 Slipways. Code of Practice for design and construction of diaphragm walls

Indian Standards for Foundation Work

IS 2911: Part 1: Sec 1:1979 Code of practice for design and construction of pile foundations

Part 1 Concrete piles, Section 1, Driven cast in-situ concrete piles

IS 2911: Part 1: Sec 2:1979 Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles

IS 2911: Part 1: Sec 3:1979 Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles

IS 2911: Part1: Sec 4:1984 Code of practice for design and construction of pile foundations. Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles

IS 2911: Part 2: 1980 Code of practice for design and construction of pile foundations: Part 2 Timber piles

IS 2911: Part 3: 1980 Code of practice for design and construction of pile foundations: Part 3 Under reamed piles.

IS 2911: Part 4: 1985 Code of practice for design and construction of pile foundations: Part 4 Load test on piles

IS 2950: Part 1: 1981 Code of practice for design and construction of raft foundations – Part I: Design

IS 2974: Part 1: 1982 Code of practice for design and construction of Machine Foundations- Part 1: Foundation for Reciprocating Type Machines.

IS 2974: Part 2: 1980 Code of practice for design and construction of machine foundations. Para 2 Foundations for impact type machine (hammer foundations)

IS 2974: Para 3: 1992 Code of practice for design and construction of machine foundations for rotary type machines (medium and high frequency)

IS 2974: 1979: Code of practice for design and construction of machine foundations: Part 4 Foundations for rotary type machines of low frequency.

IS 2974: Part 5: 1987 Code of practice for design and construction of machine foundations Part 5 Foundations for impact machines other than hammers (forging and stamping press, pig breaker drops crusher and jolter)

IS 1080: 1985 Code of Practice for design and construction of shallow foundations on soils (other than raft, ring and shell).

IS 13094: 1992 Guidelines for Selection of ground improvement techniques for foundation in weak soils.

Indian Standards for Structural Design

IS 875(Part I to V): 1987 Code of Practice for design loads (other than earth quake) for buildings – dead loads, imposed loads, wind loads, snow loads, special loads and load combinations.

IS 456: 2000 Code of Practice for plain and reinforced concrete.

IS: 800: 1984 Code of practice for general construction in steel

IS: 801: 1975 Code of practice for use of cold formed light gauge steel structural members in general building construction.

IS: 803: 1976 Code of practice for Design fabrication and Erection of vertical mild steel cylindrical welded oil storage tanks.

IS 1893: Part 1: 2002 Criteria for Earthquake Resistant Design of Structures

Part I – General Provision and Buildings

IS 1893: Part 4: 2005 Criteria for earthquake resistant design of structures –Part 4- Industrial Structures including Stack-like Structures.

IS 4326: 1993 Code of Practice for Earthquake Resistant design and construction of buildings.

B-2 Bulk Liquid Terminals and Tank Farms

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

C. Cargo Handling Equipment

C-1 General

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

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

- Code of practice for fatigue IS 4137 – 1985: Design, erection and testing (Structural Portion) of Cranes and Hoists – Code of Practice.

BS 5400 – Part 10 Steel concrete and composite bridges

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

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

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

Electricals

IEC standards

IEE – regulations for the electrical equipment of buildings

BS 4999 / FEM 3rd edition Booklet 4 - Motors

BS 171, BS 3941, BS 3938 - Transformers

BS 99 – Fuses

Welding

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

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

Painting

BS 5493 Code of practice for protective coating of iron and steel structures against corrosion

Swedish Standard Sa 2,5 or SIS ST3, SIS 055900 surface preparation

General

IS 13367: Part 1: 1992 Safe use of Cranes - Code of Practice Part 1 General ***Classification of Crane***	
Structures	
Class of utilization:	U8 (4 Million loading cycles)
State of loading:	Q3

Group classification:	A8
Impact factor:	1.4
Duty factor:	0.9
Nominal load spectrum:	0.8 of rated capacity factor

Mechanism			
Class of Utilization State of Loading Group Classification			
Hoist	T8	L3	M8
Traverse	T8	L3	M8
Travel	T5	L2	M5
Boom hoist	T3	L3	M4

Mobile Equipment

IS 4357: 2004 Methods for Stability Testing of Forklift 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

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

IS 11592 – 2000

IS 7465 – 1974

IS 7155: Part 1: 1986

IS 7155: Part 2: 1986

IS 7155: Part 3: 1986

IS 7155: Part 4: 1990

IS 7155: Part 5: 1990

IS 7155: Part 6: 1990

IS 7155: Part 7: 1990

IS 7155: Part 8: 1994

Idlers and Pulleys

IS 8598 – 1987

IS 8531 – 1986

IS 11507 – 1985

Flat Belt Conveyors

Code of practice for selection and design of Belt Conveyors

Portable and Mobile troughed Belt Conveyor

Code of recommended practice for conveyor safety: Part 1 General Information

Code of recommended practice for conveyor safety: Part 2 General Safety requirement

Code of recommended practice for conveyor safety: Part 3 Belt Conveyors and feeders

Code of recommended practice for conveyor safety: Part 4 Vibrating Conveyor/feeder

Code of recommended practice for conveyor safety: Part 5 Apron Conveyor/Apron Feeder

Code of recommended practice for conveyor safety: Part 6 Selection, Training and Supervision of Operators

Code of recommended practice for conveyor safety: Part 7 Inspection and Maintenance

Code of recommended practice for conveyor safety: Part 8 Flight Conveyors (scraper conveyors)

Idlers and Idlers Sets

Pulleys for Conveyors

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

Electrical

IS 325: 1996: Three-phase induction motors

IS 900: 1992: Code of practice for installation and maintenance of induction motors

IS 1231: 1974: Dimensions of Three-phase Foot-mounted Induction Motors:

IS 2223: 1983: Dimensions of flange mounted ac induction motors

IS 3682: 1966: Flame-proof ac motors for use in mines

IS 3842: Part 2: 1966: Application guide for electrical relays for ac systems: -Part 2 Over current relays for generators and motors

IS 4029: 1967: Guide for testing three-phase induction motors

IS 8151: 1976: Single-speed three-phase induction motors for driving lifts

IS 8789: 1996: Values of performance characteristics for three-phase induction motors

IS 9628: 1980: Three-phase induction motors with type of protection 'n'

IS 10242: Part 3: Sec 1:1983 Electrical installations in ships: Part 3 Equipment, Sec 1 Generators and motors

IS 12615: 2004: Energy Efficient Induction Motors - Three Phase Squirrel Cage: IS 13529: 1992: Guide on Effects of Unbalanced Voltages on the Performance of Three-Phase Cage Induction Motors

IS 13555: 1993: Guide for Selection and Application of 3-Phase A.C. Induction Motors for Different Types of Driven Equipment

IS 14122: 1994: Built in thermal protection for electric motors rated up to 660 V ac

IS 14377: 1996: Specification for Three-phase Induction Motors for Fans Used in Air-conditioning and Ventilation

IS 15429: 2004: Storage, Installation and Maintenance of DC Motors - Code of Practice

IS 3043: 1987: Code of practice for earthing

IS 3151: 1982: Earthing transformers

IS 5553(Part 6) 1991: Reactor Parts – Earthing of Transformers

IS 9921: Part 1: 1981: Specification for Alternating Current Disconnection (Isolators) and Earthing Switches for Voltages above 1 000 V - Part I: General and Definitions

IS 9921: Part 2: 1982: Alternating current disconnections (isolators) and earthing switches for voltages above 1000 V: Part 2 Rating

IS 9921: Part III: 1982: Specification for Alternating Current Disconnections (Isolators) and Earthing Switches for Voltages above 1000 V - Part III: Design and

Construction

IS 9921: Part 4: 1985: Specification for Alternating Current Disconnections (isolators) and Earthing Switches for Voltages Above 1000 V - Part 4: Type Tests and Routine Tests

IS 9921: Part 5: 1985: Specification for Alternating Current Disconnection (Isolators) and Earthing Switches for Voltages Above 1000 v - Part 5: Information to be given with Tenders, Enquiries and Orders

IS 12776: 2002: Galvanized Strand for Earthing – Specification

IS 14981: 2001 Live Working - Earthing or Earthing and Short- Circuiting Equipment Using Lances as a Short- Circuiting Device-Lance Earthing

IS 13947: Part 2: 1993 Specification for Low-voltage Switchgear and Control gear - Part 2: Circuit Breakers

IS 14658: 1999 High Voltage Alternating Current Circuit Breakers - Guide for Short-circuit and Switching Test Procedures for Metal-enclosed and Dead Tank Circuit Breakers

IS 8828: 1996 Electrical Accessories - Circuit Breakers for Over Current Protection for Household and Similar Installations

IS 2309: 1989 Code of Practice for Protection of allied structure against lightning

IS 732 IS 732: 1989 Code of Practice for Electric wiring installation

IS 694: 1990 PVC insulated Cables for working voltages up to and including 1100V

IS 1554 (Part 1):1988 PVC insulated (Heavy Duty) electric cables: Part 1 for working voltages up to and including 1100 V

IS 1554 (Part 2): 1988 PVC insulated (Heavy Duty) electric cables: Part 2 for working voltages from 3.3 kV up to and including 11 kV

IS 7098 (Part 1): 1988 Cross linked Polyethelene insulated PVC sheathed cables Part 1 for working voltages up to 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 up to and including 33 kV

IS 7098 (Part 3): 1988 Cross linked Polyethelene insulated PVC sheathed cables Part 3 for working voltages from 66 kV up to 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 its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out.

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

While carrying out the repairing, maintaining and replacing the project facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or 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.

Maintenance Standards

ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard

IS 13367: Part 1: 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes (Tower Cranes)

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 along with 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

SL No	Milestone date	Activity/level of completion of project
1	06 months from Date of Award of Concession	10% of Construction Works including Preparation of Engineering Drawings, Site Preparation, Setting and development and construction of Concrete Jetty should have been completed
2	12 months from Date of Award of Concession	40% Completion of Construction work
3	24 months from Date of Award of Concession	100% of construction Works including Development of Back up Area, Installation of all equipment, Construction of Admin Building, Operational Building, Workshop, Sub station, Pump House, gate complex, internal roads, Utilities, testing, commissioning, Trial Run should have been completed.

APPENDIX 6

DESIGNS AND DRAWINGS

The Designs & Drawings to be prepared by the Concessionaire shall include but not be limited to the following:

1. Layout plans of Project Facilities and Services.

2. Detailed facility plan within the land boundary handed over to the Concessionaire by the Concessioning Authority. All land boundary coordinates need to be specified.

3. Detailed structural analysis, design & drawings for all Project Facilities and Services inter alia for the components of the project facilities indicated in Appendix –4 (Project Requirements).

4. Design basis report covering the jetty structure and other structures, terminal Roads, Railway, Utility services and mechanical equipments including details of the investigation reports.

5. Cargo flow diagram and capacity computation.

6. Method statement & Quality Assurance Plan of all discipline/ Item of works.

7. Operation and Maintenance Plan.

8. Designs and Drawings of the equipments, electrical items that will be installed.

9. Detailed Plan, designs, drawings of Environmental Mitigation measures that will be undertaken.

10. As Built details of the facilities. The Concessionaire shall within a period of 45 (forty five) days of award of the Concession shall prepare aforementioned Designs and Drawings and report on analysis and structural design of Project Facilities and Services . The Concessionaire shall submit the same for review to the Independent Engineer and Concessioning Authority. Concessionaire shall incorporate comments of the Independent Engineer wherever feasible to conform to the Construction Standards

APPENDIX 7

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

1.1. These Terms of Reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the Concession Agreement dated (the "**Agreement**"), Development of Concrete Jetty for Handling Liquid Cargo at Budge Budge, Kolkata on Design, Build, Finance,Operate and Transfer (DBFOT) mode which has been enteredinto between the Authority and (the "**Concessionaire**") for the Project at SMPK, for .....on design, build, finance, operate and transfer (the "**DBFOT**") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement

2.2 References to Articles, Clauses and Appendix in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Appendix of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.3, 1.4 and 1.5 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

a. review of the Drawings and Documents as set forth in Paragraph 4;

b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;

c. conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;

d. review, inspection and monitoring of operation and maintenance as set forth in Paragraph 6;

e. review, inspection and monitoring of Concessionaire's obligations in Clause 18.2 and as set forth in Paragraph 7;

f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

h. assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and

i. Undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including 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/observations to the Concessioning Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings in accordance with Appendix-6 and furnish its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.

4.4 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 within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Concessioning Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Concessioning Authority.

5. Construction Period

5.1 In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 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 Scope of the Project and the specifications and 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 of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Concessioning Authority and the Concessionaire within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to specifications and 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. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Concessioning Authority in relation to structures, buildings and equipment (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to 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.

5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasonsto be recorded in writing, increase the aforesaid sample size by up to 10% for certain categoriesor types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. 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.

5.8 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 specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, 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 COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer

shall inspect the suspended works and make a report to the Concessioning Authority forthwith, recommending whether or not such suspension may be revoked by the Concessioning Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority and the Concessionaire of the same.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in this Appendix-7 and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 6.7 and this Appendix-7.

5.14 Upon reference from the Concessioning Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 6.8 and certify the reasonableness of such costs for payment by the Concessioning Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the maintenance manual.

6. Operation Period

6.1 In respect of the Drawings, Documents and Safety Standards received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall review the monthly report on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, Tariff earned and collected in respect of Project Facilities and Services furnished by the Concessionaire and send its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.3 The Independent Engineer shall inspect the Project, once every year, before the 20th (twentieth) day of any month, and make out an operation and maintenance inspection report setting forth an overview of the status, quality and safety of operation and maintenance including its conformity with the key performance indicators, maintenance requirements and Safety Standards. In a separate section of the operation and maintenance inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in operation and maintenance of the Project. The Independent Engineer shall send a copy of its operation and maintenance inspection report to the Concessioning Authority and the Concessionaire within 7 (seven) days of the inspection.

6.4 The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.

6.5 The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.6 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages, if any, payable by the Concessionaire to the Concessioning Authority for such delay.

7. Termination

7.1 At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the requirements set forth in Clause 18.2 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

The Independent Engineer shall notify its programme of inspection to the Concessioning Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Concessioning Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Concessioning Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Concessioning Authority or such other person as the Concessioning Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Concessioning Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Annexure

Tests

1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their Contractor shall be as per the relevant provisions of this Agreement.
2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipments and machinery.
5) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipments and machinery and any other component to ascertain the soundness of the work.
6) Schedule of Test.
(i) The Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of this Agreement.
(ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted.
7) Tests.
(i) Visual and physical test: The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
(ii) Test drive: The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and esting of equipments and machinery
(iii) Structural test: All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
(iv) Environmental Audit: The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
(v) Safety Review: Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Agreement.
(vi) The procedures for tests: The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged by the Concessionaire.
8) The Independent Engineer shall obtain a copy of operational and maintenance manuals of the Project Requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements: The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also

cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.
9) The test procedure shall be followed as per ASTM, BIS, IS.
10) Test shall also satisfy the appropriate Authority and Certification
(i) Dock safety Directorate
(ii) Environmental Authority
(iii) Director of Explosives
(iv) Fire
(v) Ground Water Authority
(vi) Customs
(vii) Indian Railways
11) Test of Handling Equipments & Electrification works The Concessionaire shall within a period of 45 (forty five) days of Date of Award of Concession submit to Concessioning Authority and Independent Engineer a report highlighting type of tests that would required to be carried out as per the type of the equipments for the above mentioned categories. The Independent Engineer after taking into account Concessioning Authority's comments shall send its comments to the concessionaire within 15 (fifteen) days of receipt of report highlighting type of tests that would required to be carried out as per the type of the equipments for the above mentioned categories. The Concessionaire shall incorporate comments of the Independent Engineer and shall submit revised document within 10 (ten) days of receipt of comments.

APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/ CONCESSIONING AUTHORITY

A. The Concessionaire is liable to obtain Applicable Permits as and when required before commencement of the Construction Works and during the Concession Period. The following is list of Applicable Permits, is not exhaustive however, the Concessionaire will have to ascertain independently the Applicable Permits and indicate time frame for obtaining the applicable permits. Activity:
    1. ISPS Clearance
    2. Dock Safety Clearance
    3. Fire safety clearance from CCE,Nagpur/OISD Guidelines/Applicable international code & practice.
    4. PESO Clearance
    5. Plot Plan Approval from Dock Safety Inspectorate/OISD Guidelines
    6. Electrical Installation from WESEDCL
    7. Public liability insurance during construction,commissioning and operation from Appropriate insurance Agency
    8. Custom Notification from Commissioner of Customs
    9. Any other clearance required as per statutory requirement
B. Permits related to Environmental Law such as EIA Clearance/Consent to establish will be applicable in this project and responsibility of Concessioning Authority
C. Consent to operate is the responsibility of Concessionaire as per Article 3.1(b)

APPENDIX 9

PERFORMANCE GUARANTEE

(PROFORMA OF BANK GUARANTEE)[33]

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 favor of

THE Board of Authorities Syama Prasad Mookerjee Port Kolkata a permanent body having perpetual succession and a common seal constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at 15,Strand Road,Kolkata-1,West Bengal hereinafter referred to as **"the Board"** or **"the Concessioning Authority"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a) The Board, vide its Request for Qualification cum Request for Proposal dated [●] (**"the RFQ-Cum-RFP"**) invited duly short-listedbidders to implement a project envisaging Selection of Private Developer for Development of Concrete Jetty for Handling Liquid Cargo at Budge Budge, Kolkata on Design, Build, Finance, Operate and Transfer (DBFOT) mode.

_____(more particularly described in Appendix 1 and hereinafter referred to as

"the Project");

b) After evaluation of the bids received in response to the RFQ-Cum-RFP, the Board accepted the bid ofthe consortium comprising of___,_____and

_____(**"the Consortium"**) OR the Board accepted the bid of ___

[33] To be issued by a Scheduled Bank in India.

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 RFQ-Cum-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. 4,63,00,000(Rupees Four Crores and Sixty Three Lakhs Only) as security for dueand 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.4,63,00,000(Rupees Four Crores and Sixty Three 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 Guarantorshall 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. . 4,63,00,000(Rupees Four Crores and Sixty Three 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 Concessioning Authority to perform any of its obligations under the Agreement;
   c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;

d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

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

f) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defense 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 Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defense, 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 Design,build, operate,finance and transfer DBFOT basis, through [(Name of Concessionaire)], hereby certify that the Tests specified in Article 6 and Schedule-7 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 ENGINER 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 Design build, operate and Finance transfer (DBFOT)basis through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article 6 and Schedule- 7 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioning Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

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

APPENDIX 11

PERSONNEL AND LABOUR REQUIREMENTS

The Concessionaire shall comply with all applicable labour laws including Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ESIC Act .1948, The Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, Payment of Gratuity Act, 1972 **Dock Workers (Regulation of Employment) Act, 1948** and the **Dock Workers (Safety, Health and Welfare) Act, 1986** as amended from time to time. The Concessionaire shall ensure safety and health, and overall welfare of all workers engaged under this Contract.

APPENDIX 12

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

(Scale of Rates)

A) For land: Schedule of Rent of SMP, Kolkata
B) For Utilities and Services: Scale of Rates of SMP, Kolkata

Find below the link of SMPK under Estate Corner
https://smportkolkata.shipping.gov.in/index1.php?layout=2&lang=1&level=1&sublinkid=1388&lid=1213

APPENDIX 13

MINIMUM GUARANTEED CARGO

SL .No.	Period from the Date of Award of Concession	MGT (MTs per annum)
1	1st and 2nd year (Construction period)	Nil
2	3rd and 4th year (Operation Period)	0.28 MMT
2	5th and 6th Year (Operation period)	0.45 MMT
4	7th year onwards (Operation period)	0.79 MMT

APPENDIX 14

PERFORMANCE STANDARDS

Performance Standards

1. Gross Berth/ Jetty Output

The parameter deals with the productivity of the terminal (Gross berth / jetty Output) for different typesof cargo. In case of Liquid Cargo, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross berth / jetty Output. Higher terminal capability and greater parcel size will lead to high productivity.

The Gross berth / jetty 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 / jetty allowance of 4 hours per day shall be subtractedfrom the total hours.

The indicative norms for Gross berth / jetty Output for different categories of cargo are as follows:

Liquid Cargo	Norms
Paraxylene cargo handled with flexible hoses	440 T/Hrs
POL Cargo handled with Marine Unloading Arms/flexible hoses	180 T/Hrs
Edible Oil/Chemical Cargo handled with flexible hoses	240 T/Hrs
LPG/LNG handled with Marine Unloading Arms	250T/Hrs

Weightage in case of a shortfall in meeting the prescribed performance standard – 70%

2. Transit Storage Dwell Time:

a) Liquid Cargo:

The Transit Storage Dwell Time for 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) = (OB + Received/Dispatched-CB) /No. of

daysOB = Opening Balance, CB = Closing Balance.

Average Parcel Sizes (B) = (P1+P2+ ……+Pnn)/ (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)

3. Turnaround Time for receipt/delivery operation:

The Turnaround 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 -10%

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 Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% of the Tariff collected and other revenues derived from the project in the respective quarter for every shortfall of 10% 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 / jetty Output by x%, Transit Storage Dwell Time by y% and Turn round time for receipt/delivery operations byz% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overallshortfall in average performance will be (0.7x + 0.2 y + 0.1 z) %.

APPENDIX 15

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, 2013 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 Senior Lenders' Representative)] and having its registered officeat [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regardto matters arising out of or in relation to this Agreement (hereinafter referred to as the "Senior 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

BOARD OF AUTHORITIES for SYMA PRASAD MOOKERJEE PORT, a permanent body having perpetual succession and a common seal constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at 15,Strand Road,Kolkata-1,West Bengal

___ _____, hereinafter referred to as **"the Concessioning Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

A. The Concessioning 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 Design, Build, Finance, Operate And Transfer (DBFOT) basis. The Senior 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;

"Senior Lenders' Representative" means the person referred to as the Senior 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 1st April to 30th June, 1st July to 30th September, 1st October to 31st December or 1st January to 31st March.

1.2 Interpretation

1.2.1 References to Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior 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 Concessioning Authority, the Senior Lenders, the Senior 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 Concessioning Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessioning Authority, the Senior Lenders/Senior 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, Senior Lenders or the Concessioning 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 Concessioning Authority, the Senior 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 Senior Lenders/Senior Lenders Representative and thereafter by the Concessioning Authority.

2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Senior 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 Concessioning Authority, the Senior Lenders (through the Senior Lenders' Representative) and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Concessioning Authority, the Senior 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 Banks, other lenders, shareholders and insurance companies;

b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;

c) all Tariff collected by the Concessioning Authority in exercise of its rights under the Concession Agreement; and

d) all payments by the Concessioning Authority, after deduction of any outstanding License Fee and Royalty; and

e) termination Payment

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 Concessioning 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

4.1.1 Withdrawals during Concession Period

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, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

i) all taxes due and payable by the Concessionaire for and in respect of the Project;

j) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;

k) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;

l) towards payment of Royalty to the Authority;

m) towards its debt service obligations under the Financing Documents;

n) towards payment of other sums payable to the Concessioning Authority and liquidated damages, if any;

o) towards any reserve requirements in accordance with the Financing Documents;

p) balance, if any, in accordance with the instructions of the Concessionaire

4.1.2 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

a) all taxes due and payable by the Concessionaire for and in respect of the Project;

b) 90% of Debt Due excluding subordinated debt;

c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioning Authority as due and payable to it by the Concessionaire;

d) outstanding debt service including the balance of Debt Due excluding subordinated debt;

e) outstanding subordinated debt

f) incurred or accrued operation & maintenance expenses;

g) any other payments required to be made under this Agreement; and

h) balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under Sub-clause (h) of this Clause 4.1.3 until a Vesting Certificate has been issued by the Concessioning Authority as per provision of Concession Agreement

The provisions of this Clause 4.1 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 4.1.2 have been discharged.

4.1.3 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:

a) towards taxes and statutory dues payable by the Concessionaire;

b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of

the Concessionaire's liability under such Financing Documents;

c) all amounts due to the Concessioning 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:

i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioning Authority;

ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and

iii) Vesting Certificate has been issued by the Concessioning Authority under the provisions of Clause 18.5.

4.2 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.

4.3 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

c) Concessionaire in breach of the terms of this Agreement; or 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 Senior Lenders, or any of its obligations to the Concessioning 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 Concessioning Authority and the Senior Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior 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 Senior 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 Senior 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 Senior 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 Concessioning Authority, Escrow Bank and the Senior Lenders, acting through the Senior 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 Concessioning 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 Concessioning Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessioning 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 fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the 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 High Court at Calcutta shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of sovereign immunity

The Concessioning 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 Concessioning 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 Concessioning Authority:

CHAIRMAN

SYAMA Prasad Mookerjee Port

15,Strand Road, Kolkata-1,West Bengal

_____

Fax No:

_____

Email:

_____

The Concessionaire:

The MANAGING DIRECTOR

_____Ltd

_____

_____

Fax No. _____

Email: _____

The Senior Lenders/Senior Lenders representative:

———————————————Ltd

_____

_____

Fax No. _____

Email: _____

The Escrow Bank:

———————————————Ltd

_____

_____

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 authorised 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 SENIOR LENDERS by the Senior 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.

APPENDIX 16

BASE CASE FINANCIAL MODEL (BCFM)

Such Financial Model would essentially include;

i. estimated project cost,
ii. License Fee and Royalty payable to the Concessioning Authority,
iii. annual estimated Project revenue,
iv. equity contribution,
v. cargo handling projections estimated by Concessionaire,
vi. discounted net present value of the cash flows,
vii. equity IRR,
viii. debt equity ratio, and
ix. debt service ratio.

Note: Such format of the Financial Model shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.

APPENDIX 17

MONITORING ARRANGEMENT

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessioning Authority

Sr. No.	Obligations of the Port (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
1 (a)	Meeting the Conditions Precedent (Clause 3.1) Procurement of clearance including from Ministry of Environment & Forests Handing over physical possession of Project Site/ Port Assets for the project (Stage wise, if so envisaged)		
1 (b)	Putting in place arrangement for provision of Supporting Project Infrastructure Informing the Concessionaire about the fulfillment of Conditions Precedent (Clause 3.1)		
2	In case conditions precedent are not complied within the specified time, details of extension of time availed (Clause 3.4)		
3	Recovery of liquidated damages for failure to fulfill Conditions Precedent (Clause 3.5)		
4	Appointment of Independent Engineer – 5.1		
5	Furnishing of comments/ observations on the Designs & Drawings to Independent Engineer – 6.2 (b)		

6	Grant applicable permits, approval and consents or render assistance as may be required by Concessionaire under concession agreement – 6.5 (a)		
7	Make available records of sub soil investigation, if requested – 6.5 (b)		
8	Assist the Concessionaire in obtaining immigration clearance, employment permits and residential premises for any foreign personnel engaged or employed by Concessionaire. – 6.5 (d)		
9	Assist Concessionaire or contractor to import into India all items of equipment and material required for the project. – 6.5 e		
10	If required on advice of Independent Engineer, suspend the construction works (Clause 6.6(a))		
11	On advice of IE, revoke the suspension after the rectifications (Appendix 7)		
12	If required as advised by Independent Engineer, concession authority may extend the construction phase, if the delay is not attributable by concessionaire – 6.2€		
13	To witness the tests along with Independent Engineer to ensure project meets with construction standards. – 6.7 (a)		
14	To verify the performance security is maintained as per clause 4.1, or otherwise termination of agreement for non-maintenance of performance security as per clause 15.1 (a)(xii)		

15	Recovery of liquidated damages if any from performance guarantee for failure to achieve milestones (Clause 6.9)		
16	In case of Change of Scope, whether procedures laid down in Article 6.8 is followed		
17	Ensuring issue of Completion Certificate by Independent Engineer (Clause 6.7)		
18	In case aggregate delay exceeds 180 days or LD exceeds 5% of project cost, terminate the agreement (Clause 6.9)		
19	Is any action required on monthly Inspection report from IE (Appendix 7)		
20	In case Concessionaire fails to complete the works on account of Force Majeure or due to reasons attributable to authority, reduce the scope of work (Clause 6.7(e))		
21	In event of non-compliance of conditions precedent within the time including the extended time if any termination of the agreement (Clause 3.6)		
22	Ensuring Operation of Escrow account in an orderly manner (Clause 9.5)		
23	Issue of Notice for a Force Majeure Event (Clause 14.5)		
24	In case of Force Majeure Event, whether extension of time has been granted (Clause 14.9 (b))		
25	In the event of termination due to Force Majeure Event, whether Termination Payment has been paid as per clause 17.1(a)		

26	Issue of Notice on occurrence of an event of default (Clause 16.1)		
27	Informing Senior Lenders of Intent to Terminate (Clause 16.1)		
28	Termination Payment for termination due to Port Event of Default as per clause 17.1(c))		
29	Exercising Rights and meeting obligations upon termination (Clause 16 and 17)		
30	Assessment of change in law and treatment of costs out of change in law (Clause 13.2(b))		
31	Amicably resolving disputes (Clause 19.1 & 19.2)		
32	Declaration of Project Facilities & Services as ready for operation in accordance with Section 37 of MPA Act (Clause 6.5 (c))		
33	Execution of Substitution Agreement within 30 days of notice from the Concessionaire as per clause 12.3 (b) v		
34	Any other project specific provision, observation, complaint or suggestion		

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessionaire

Sr. No.	Obligations of the Concessionaire (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
1	Providing and maintaining the Performance Guarantee (Clause 4.1)		
2 (a)	Compliance of Conditions Precedent (Clause 3.1(a)) Execution of Escrow Agreement and opening of Escrow Account Procuring all Applicable Permits as per Appendix 8 Submission of Financial Package, Financing Documents Financial Model and other Financial Close documents to Port Submission of Confirmation of Representation & Warranties by Consortium Members Submission of legal opinion with respect to the authority of Concessionaire Informing Concessioning Authority about fulfillment of Conditions Precedent (Clause 3.2)		
3	In case Conditions Precedents are not complied within the specified time, details of extension of time availed (Clause 3.5)		

4	Submission of Designs and Drawings to the Independent Engineer &Concessioning Authority (Clause 6.2 and Appendix 6)		
5	Arrangement of financial and other resources as per Financing Plan as evidenced by Escrow Account (Clause 6.4(a))		
6	Carry out works in compliance with the Construction Standards (clause - 6.4 (b)		
7	Obtain Applicable Permits and comply with Applicable Laws. - 6.4 (d)		
8	Providing access to Port representatives for inspections for ascertaining compliance of requirements (Clause 6.4(e))		
9	Submission of Monthly Progress Reports to Independent Engineer (Clause 6.4(f))		
10	Removal of Defects/ deficiencies as observed by Independent Engineer (Clause 6.4(f))		
11	Ensure safe and timely construction and completion of the Project/ - 6.4 (h)		
12	At least 60 days prior to the likely completion of the Project, notify the Independent Engineer of the date when it intends to commence commercial operations - 6.7 (a)		
13	Providing assistance to Independent Engineer for conducting all requisite Tests on structures/ equipment etc., - 6.7 (a)		
14	To obtain Provisional Certificate of Completion as per clause 6.7(d)		
15	To complete all outstanding items listed in Punch List within 90 days or extended period by Concessioning Authority. – 6.7 (d)		
16	Deleted		

17	Pay License fee annually and Royalty monthly – 9.1 (a) and 9.2		
18	Pay liquidated damages to Concessioning Authority, if applicable. – 6.9		
19	Maintenance of Insurance as per clause 12.1(c)		
20	In case of Execution of substitution agreement, whether notice has been issued by the Concessionaire to the port as per clause 12.3 (b) v		
21	Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2		

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessionaire

Sr.No.	Obligations of the Concessionaire (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken
1	Prompt commencement of operations after "Ready for Operation" declaration (Clause 7.1(a)(i)(a))		
2	Operation of Project Facilities as per "Project Requirement" (Clause 7.1(a) (i)(c))		
3	Achieving Performance Standards (Clause 7.1(a) (i)(d))		
4	Compliance of O&M and Safety Standards (Clause 7.1(a) (i)(e))		
5	Rapid & Effective response in the event of accident/ Emergency (Clause 7.1(a) (i)(f))		
6	Replacement and repair of project facilities in a timely manner (Clause 7.1(a) (i)(g)		
7	Manage & Operate Project Facilities on "First Come First Served "basis except for Priority & Preferential berthing as per GOI guidelines (Clause 7.1(a) (i)(h))		
8	Maintenance of Proper Records relating to Revenue and operation of Project Facilities (Clause 7.1(a) (i) and 9.4)		
9	Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws (Clause 7.1(a) (i) (j))		
10	Prevention of encroachment / unauthorized use of Project Facilities (Clause 7.1(a) (i)(l))		
11	Repair & Maintain all Project Facilities as per Agreement provisions &Good Industry Practice at all times during the Concession Agreement.7.1(a)(ii)		

12	Repair, Replace or Restore the damaged Project Facilities at its own costs.7.1(a)(iv)		
13	Obtaining prior written permission of Concessioning authority for removal of assets clause 7.1(a)(v)		
14	Replacement of equipment/ assets as per Good Industry Practice (Clause 7.1(a) (iii))		
15	Compliance with Monthly Reporting Requirements (Clause 7.1(a) (viii))		
16	Cooperation to Independent Engineer-in access for inspection for safety audit once in a year (Clause 7.1(a) (vii))		
17	Cooperation to port representatives for inspection and review of operations also to compliance with requirements of Agreement (Clause 7.1(a)(vii))		
18	Installation & Operation of specified computer system and Network as specified by Concession Authority (Clause 7.1(a) (ix)		
19	Ensuring the prescribed Security Arrangements conforming to ISPS code (Clause 7.1(a) (x)		
20	Employment of personnel of foreign origin only after requisite approvals from Government of India (Clause 7.1(a) (xi))		
21	Employ qualified and skilled personnel.7.1(a)(xi)		
22	Meeting Minimum Guaranteed Cargo requirements (Clause 7.1(a) (xii))		
23	To recover tariff from users of the project facilities as per Tariff Order Notification and deposit all Tariff in Escrow Account (Clause 8.1)		
24	If requested by CA, collect the cess and charges from the users on behalf of Concessioning Authority 8.2		
25	Make timely payments to Concessioning Authority viz. Royalty & License fees (Clause 9.1(a) & 9.2 (b)		

26	To operate Escrow Account as per priority of payments as per clause 9.5(a)		
27	Meeting any claim/ action/ suit etc. alleging loss/ destruction of goods (Clause 7.1(a)(xiii))		
28	Inform Concessioning Authority if any Direct or indirect change of management of concessionaire as per clause 11.2		
29	Payment of all taxes/ duties/ levies etc., to the Government Authorities (Clause 12.1(b)		
30	Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice (Clause 12.1(c))		
31	Providing copies of insurance policies to the Port (Clause 12.1(c) (iii)		
32	Utilisation of money received under insurance policies as per terms of Agreement (Clause 12. 1(c) (iv)		
33	Deleted		
34	Ensuring conduct of Conditional Survey by Independent Engineer and compliance of remedies thereof before expiry of concession period. (Clause 12.1(g))		
35	Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey [Clause 12.1 (g) ii]		
36	Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Port (Clause 15)		

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessioning Authority

Sr. No.	Obligations of the Port (Related MCA Clause)	Whether any action required (Yes/ No)	If yes, give details of action taken *
1	To get from the Concessionaire copies of "as built" design and drawings maintenance schedule of equipment etc. as reviewed by Independent Engineer as per (Appendix 6) & clause 18.2 ©		
2	Release of Performance Security after 6 months from the COD (Clause 4.1)		
3	Scheduling entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms. - Clause 7.1 © (i) (a)		
4	Maintenance of entrance channel draft Clause 7.1(c) (i)(b) Maintenance of required draft alongside berth / jetty (Clause 7.1(c) (i) (d))		
5	Provide waterside safety and safety of navigation; - Clause 7.1 (c) (i) (c)		
6	Provision and maintenance of all general port infrastructure other than covered under the concession – Clause 7.1 (c) (i) (f)		
7	Grant approvals/ consents sought by the Concessionaire as required under the agreement Clause 7.1 (c) (ii)		
8	Evolve mutually acceptable mechanism for sharing the common costs by existing and future terminal operators Clause 7.1 (c) (i) i		

9	Provide access to all applicable infrastructure facilities and utilities including water, electricity etc. Clause 7.2		
10	Review performance standards from the monthly report submitted by Concessionaire and take remedial action including recovery of liquidated damages as per Clause 7.3		
11	To operate escrow account as per priority of payments as per clause 9.5(a)		
12	Whether equity Holding requirements are met by lead member/ members of the applicant consortium as per clause 11.2		
13	Assistance to Concessionaire by giving recommendation letter for getting applicable permits Clause 12.2 (a)		
14	Pay levy (or) levies including increase in taxes, duties etc., on account of port assets payable to State Govt. Clause 12.2 (b)		
15	Shall not operationalise competing facility as per Clause 12.2 (c)		
16	Issue notice of Force Majeure In the event of occurrence of any Force Majeure event (Clause 14.5)		
17	Extension of time for performing obligations due to occurrence of Force majeure (Clause 14.9 (b))		
18	Compliance of provisions of Clause 14.10 in the event of force majeure continuing beyond 120 days		
19	Payment of Termination Payment in the event of termination due to force majeure event as per clause 17.1(a) Payment of Termination Payment in the event of termination due to Concessionaire event of default as per clause 17.1(b)		

	Payment of Termination Payment in the event of termination due to Concessioning authority event of default as per clause 17.1(c)		
20	Authorize the Concessionaire to collect cesses and charges including infrastructure cess if required and remit the same to Concessioning authority if required (Clause 8.2 and 8.5)		
21	Initiate action for amicably resolution of disputes (Clause 19.1 and 19.2)		
22	Any other observation, complaint or suggestion		
23	Payment of Compensation to Senior Lenders (Clause 17.4)		
24	Issue of Consultation Notice and Compliance of remedial process in case of Event of Default on the part of Concessionaire (Clause 15.3 & 15.4)		
25	Informing Senior lenders of intent of termination by issuing a copy of Termination Notice to them on occurrence of force Majeure/ Event of Default (Clause 15.7 and 16)		

Key Performance Indicators (KPI)/Performance Standards

(Based on MCA of Major Ports)

Sr. No.	***Maintenance/ Performance Standards***	***Indicative norms***	***Actual during the month***	**Shortfall, if any**	**Action taken to remedy shortfall**
1	Gross berth / jetty Output Appendix-14				
2	Transit Storage Dwell Time Appendix 14				

3	Turn-around time for receipt/ delivery operation Appendix 14				
4	Availability of Cranes				

(Name of the Port)

Construction/ Operation Stage Monitoring Report of (Name of the Project) for the month ended… .....(Prepared by Port to the Ministry)

I. Basic Data of the project

Sl. No.	***Project Parameters***	***Details***
1.	Name of the Concessionaire	
2.	Percentage of equity holding in case of consortium	
3.	Payment of Royalty	
4.	Date of Issue of Letter of acceptance by the port to Concessionaire	
5.	Date of signing of Concession Agreement	
6.	Time duration for fulfilling the condition precedent as per concession agreement (a) By Concessionaire (b) By Concessioning Authority	
7.	Actual Date of award of concession after fulfilling condition precedent	
8.	Date of starting of commercial operation	
9.	Estimated cost	
10.	Actual Cost	
11	Capacity	
12	Project details like length of berth, design vessel size can be handled, equipment installed, backup area etc.,	
13	Present tariff rate	
14	MGT if any as per concession agreement	
15	Cargo handled during this month	
16	Cumulative cargo handled during the financial year	
17	Any other remarks	

APPENDIX 18

Key Performance Indicators for Concessioning Authority

Nil

APPENDIX 19

Supporting Project Infrastructure

Below is the list of supporting infrastructure to be provided by ConcessioningAuthority and the timelines for completing the supporting infrastructure.		
S No	**Supporting infrastructure**	**Timeline of completion**
1	Maintenance of Navigation channel from Eastern Channel leading to Budge Budge;	From Date of Award of Concession
2	Maintenance of 8.50 m draft adjacent to Jetty Face.	From Commercial Operation Date.
3	Tugs and mooring boats;	From Date of Award of Concession
4	Access to port for Inland Transport (including roads, rail, bridges etc	From Date of Award of Concession

APPENDIX 20

Compliance to Green Ports Policy

Refer to draft Green Port policy as communicated by IPA vide letter dated 22.02.2022(Copy attached)

APPENDIX 21

Arbitration Rules of the Society for Affordable Redressal of Disputes - Ports (SAROD-Ports)

ARBITRATION RULES OF SAROD-PORTS

I N D E X

Rule

1. Scope of Application

2. Definitions

3. Notice, Calculation of Periods of Time

4. Commencement of Arbitration

5. Response by Respondent

6. Filing of Case Statements

7. Contents of Case Statements

8. Default in Filing and Serving Case Statements

9. Further Written Statements

10. SAROD-PORTS- Ports to Provide Assistance

11. Appointment of Tribunal

12. Multi-party Appointment of the Tribunal

13. Appointment of Substitute Arbitrator

14. Independence and Impartiality of the Tribunal

15. Code of Ethics for Arbitrators

16. Challenge of Arbitrators

1 7. Decision on Challenge

18. Removal of the Tribunal

19. Re-hearing in the Event of Replacement of the Tribunal

20. Jurisdiction of the Tribunal

21. Fees of SAROD-PORTS - Ports and Arbitral Tribunal

22. Transmission of File of the Tribunal

23. Juridical Seat of Arbitration

24. Language of Arbitration

25. Conduct of the Proceeding

26. Communications between Parties and the Tribunal

27. Party Representatives

28. Hearings

29. Documents - only Arbitration

30. Witnesses

31. Experts Appointed by the Tribunal

32. Rules applicable to substance of dispute

33. Closure of Hearings ·

34. Additional Powers of the Tribunal

35. Deposits to Costs and Expenses

36. Decision Making by the Tribunal

37. The Award

38. Additional Award

39. Correction of Awards

40. Settlement

41. Interest

42. Costs

43. Waiver

44. Exclusion of Liability

45. General Provisions

46. Amendment to Rules

PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD-PORTS - Ports) has been formed as a Society under Societies Registration Act, 1860 with registration_____. It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS

SAROD-PORTS ARBITRATION

RULES

Rule: 1- Scope of Application

1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.

1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-PORTS.

Rule 2 - Definitions

2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".

2.2 In these Rules:

"Act" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

“DOMESTIC ARBITRATION” means arbitration to be conducted under these rules.

"SAROD-PORTS" means the Society for Affordable Redressal of Disputes- Ports.

"SAROD-PORTS Arbitrator Panel" means the list of persons admitted to serve as arbitrators under these Rules.

“IPA” means Indian Ports Association

"IPPTA" means Indian Private Ports and Terminals Association

"GOVERNING BODY" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

“SECRETARY" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"TRIBUNAL" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

“PARTY" means a party to an arbitration agreement,

"E-Arbitration" means submission of pleadings, defense statement etc. by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.

3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4- Commencement of Arbitration

4.1 Any party wishing to commence an arbitration under these Rules (**"the Claimant"**) shall file with the Secretary and serve on the other party {**"the Respondent"**), a written Notice of Arbitration (**"the Notice of Arbitration"**) which shall include the following:

a) a request that the dispute be referred to arbitration;
b) the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
c) a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
d) a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
e) a brief statement describing the nature, **facts** and circumstances **leading to** the dispute;
f) the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
h) the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within **14 (fourteen)** days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

a) A confirmation or denial of all or part of the claims;
b) Brief statement of the nature and circumstances of any envisaged counterclaims
c) A comment in response to any proposals contained in the Notice of Arbitration; and
d) The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6- Filing of Case Statements

6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.

6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defense and counterclaim (if any) along with all documents to be relied upon by the Respondent.

6.3 Within 30 days after the service of the statement of Respondent's defense, if the Claimant intends to challenge anything in the statement of Respondent's defense and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defense to counterclaim.

6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 - Contents of Case Statements

7.1 The case statements must contain the detailed particulars of the party's claim, defense or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

7.2 It must:

a) Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
b) State fully its reasons for denying any allegation or statement of the other party.
c) State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

8.2 It the Respondent fails to submit a Statement of Respondent's Defense; the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD-PORTS to Provide Assistance

I0.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11- Appointment of Tribunal

11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.

11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD-

PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, the eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defense and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,

11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,

11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12- Multiparty appointment of the Tribunal

12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

12.2 If the parties are unable to do so, upon the lapse of the 21-day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13-Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.

14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15 .2 In this code, the masculine includes the feminine.

Disclosure

15.3 A prospective arbitrator shall disclose all facts or circumstances that may

give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances, **in terms of the arbitration and conciliation Act 1996 as amended from time to time.**

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
b) The extent of any prior knowledge he may have of the dispute.

Bias

15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favors one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.8 No arbitrator shall **Communicate** with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

Conduct

15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint **himself** with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16- Challenge of Arbitrators

16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartially or independence and also if he or she has committed any misconduct

16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,

16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

16.6 The Notice of Challenge must state the reasons for the challenge.

16. 7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

18.1 The Governing Body may on the application of a party remove an arbitrator:

a) Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
b) Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
c) Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.

18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.

18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.

18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. [neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated or participated in the appointment of an arbitrator.

20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.

20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 - Fees of SAROD-PORTS and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23- Judicial Seat of Arbitration

23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10 AM to 5 PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or ail other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.

26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 – Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the timetable with or without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.

29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.

29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation

30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

30. 7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31- Experts Appointed by the Tribunal

31.1 Unless otherwise agreed by the parties, the Tribunal may:

a) appoint one or more experts to report the Tribunal on specific issues;
b) require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.

31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute - (1) Where the place of arbitration is situated in India

32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.

33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to: -

a) Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
b) Extend or abbreviate any time limits provided by these Rules;
c) Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
d) Order the parties to make any property or thing available for inspection
e) Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
f) Make orders or give directions to any party for interrogatories;
g) Make orders or give directions to any party for an interim injunction or any other interim measure;
h) Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35- Deposits to Costs and Expenses

35.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

35.2 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defense and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of

35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.

35.5 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.

35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non• complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders

35. 7 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.

36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

3 7.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,

37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.

37.4 The Tribunal may make interim awards or separate awards on different issues at different times.

37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

3 7. 7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.

37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38- Additional Award

38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make and additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own imitative within 30 days of the date of the Award.

Rule 40- Settlement

40. l If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

40.2 The Parties shall:

a) Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
b) Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.

40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on. agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41- Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42- Costs

42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

42.2 In this Rule, "costs of the arbitration" shall include: '

a) The fees and expenses of the Tribunal and the administration fees of the SAROD-PORTS as determined by the Secretary in accordance with the Schedule of Fees;
b) The costs of tribunal appointed experts or of other assistance rendered: and
c) All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc.) of one party shall be paid by the other party.

Rule 43 - Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45- General Provisions

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46- Amendment to Rules

These Rules may from time to time be amended by the Governing Body of **SAROD-PORTS.**

APPENDIX 22

(See Clause 21.2.2)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 21.2.2 of the Agreement, the Concessioning Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Appendix-22

2. Invitation for empanelment

2.1 The Concessioning Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Concessioning Authority; and
d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the biodata of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five crores)

whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Concessioning Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Concessioning Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Concessioning Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Concessioning Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Concessioning Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

5.1 The Concessioning Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Concessioning Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Appendix-22

APPENDIX 23

(See Clause 18.5)

VESTING CERTIFICATE

1. The Chairman of_____represented by_____(the "**Concessioning Authority**") refers to the Concession Agreement dated_____(the "**Agreement**") entered into between the Concessioning Authority and (the "**Concessionaire**") for the Project on design, build, finance, operate and transfer (the "**DBFOT**") basis.
2. The Concessioning Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the obligations set forth in Clause 18.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Concessioning Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Concessioning Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the obligations set forth in Clause 18.2 and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature
Name
Designation
Address

AGREED, ACCEPTED AND For and on behalf of Concessioning Authority by:

Signature

Name

Desig

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Addre

ss

In presence of

A)

B)

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

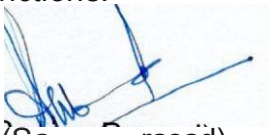
161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, *by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from* a *country or countries, or a* class *of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.*



(Sa rasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,
(1) Secretaries of All Ministries/ Departments of Government of India
(2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule **144 (xi)** in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 **(xi)** on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annex**I.

2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Annex**II.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

    a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed:* No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.

    b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the

entire process shall be scrapped and initiated *de novo.* The *de novo* process shall adhere to the conditions prescribed in this Order.

c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
    a. to all Autonomous Bodies;
    b. to public sector banks and public sector financial institutions; and
    c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
    d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
    e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies). every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.

8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

a) An entity incorporated, established or registered in such a country; or
b) A subsidiary of an entity incorporated, established or registered in such a country; or
c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
d) An entity whose *beneficial owner* is situated in such a country; or
e) An Indian (or other) agent of such an entity; or
f) A natural person who is a citizen of such a country; or
g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

(i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.
Explanation-

a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;

b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

(iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance/ placement of order, registration shall not be a relevant consideration during contract execution.

Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex** III. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local n eds etc. without making any reference to this Department.

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Joint Secretary (PPD)
Email ID: js.pfc 2.doe@gov.in
Telephone: 011-23093882

To

(1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.

(2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.

(3) Secretary DPIIT with a request to initiate action as provided under Annex I

(4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

Annex I: Competent Authority and Procedure for Registration

A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.

B. The Registration Committee shall have the following members*:

i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.

C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.

D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.

F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.

H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**

I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.

K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. Howeve,r the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**

ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

Annex II: **Special Cases**

A Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.

B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.

C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.

D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance , the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA

E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

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Annex III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidderfrom a country which shares a land border with India" for the purpose of this Order means: -

a. An entity incorporated, established or registered in such a country; or
b. A subsidiary of an entity incorporated, established or registered in such a country; or
c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
d. An entity whose *beneficial owner* is situated in such a country; or
e. An Indian (or other) agent of such an entity; or
f. A natural person who is a citizen of such a country; or
g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The *beneficial owner* for the purpose of (iii) above will beas under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
Explanation-

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

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b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries. I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

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Signature Not Verified
Digitally signed by SAURAV SHIL
Date: 2026.01.31 11:53:32 IST
Location: eProcure-EPROC