



ASSAM INLAND WATERWAYS COMPANY LIMITED

CIN: U61100AS2022SGC023303

Registered Office: DIWT, Ulubari, Guwahati, 781007 Assam

Email: [assaminlandwaterways@gmail.com](mailto:assaminlandwaterways@gmail.com)

No.: AIWCL/34/2024/22

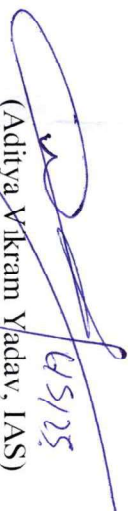
Dated: 6<sup>th</sup> May, 2025

Corrigendum-I

In reference to the tender notification no. AIWCL/34/2024/19 dtd. 1<sup>st</sup> April 2025, for e-procurement of “Request for Proposal for Management and Operation & Maintenance of Gateway of Guwahati Terminal under Assam Inland Waterways Company Limited”, certain amendments enclosed as Annexure-A have been incorporated in the bid document. Bidders are requested to take the note of these amendments prior to the submission of bid. Also replies to Pre-bid queries are attached.

Clause Reference	Existing	Modified
1.3	The deadline for uploading the Bids is: Date: 08.05.2025 Time: 14:00 Hrs	The deadline for uploading the Bids is: Date: 22.05.2025 Time: 14:00 Hrs
	Contents of the RFP	Contract Agreement is placed at Annexure-A
	The draft Contract provided by the Contracting Authority as part of the Bidding Documents are deemed to be part of this RFP	

Enclosed: Annexure-A

  
(Aditya Vikram Yadav, IAS)  
Managing Director  
AIWCL

**MANAGEMENT AND OPERATION & MAINTENANCE AGREEMENT**

**DRAFT CONTRACT AGREEMENT**

**BETWEEN**

**ASSAM INLAND WATERWAYS COMPANY LIMITED**

**AND**

**[     ]**

**FOR**

**MANAGEMENT AND OPERATION & MAINTENANCE OF GATEWAY  
OF GUWAHATI TERMINAL IN ASSAM, INDIA**

**ASSAM INLAND WATERWAYS COMPANY LIMITED**

**[Date]**

## CONTRACT AGREEMENT

**THIS CONTRACT AGREEMENT** is made and signed at Guwahati on this the day of ..... 2025.

BETWEEN:

Assam Inland Waterways Company Limited, a company incorporated under the provision of the Companies Act 2013, and having its Registered Office at 3<sup>rd</sup> Floor, DIWT Office, Ulubari, Guwahati-7, acting through its Managing Director who is the duly authorized person to sign this agreement, hereinafter referred to as **“the Contracting Authority”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

....., a company incorporated under the Companies Act, 1956/ 2013, and having its registered office at..... hereinafter referred to as **“Operator”** acting through ..... who has been duly authorized vide board resolution dated ..... to act on behalf of the Operator (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

WHEREAS:

- A. The Contracting Authority is desirous of engaging an Operator for the management and operation & maintenance of the Gateway of Guwahati Terminal at Guwahati through long term lease;
- B. The Contracting Authority had invited application through a Request for Proposal from interested parties for the management and operation & maintenance of the Gateway of Guwahati Terminal at Guwahati.
- C. In response to the invitation referred to in recital ‘B’ above, the Contracting Authority received proposals from various parties including the proposal dated ..... submitted by the Applicant/Consortium in accordance with the Request for Proposal;
- D. The Contracting Authority, after evaluating all the proposals received by it, 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 Acceptance dated .....

- E. Following the issue of the Letter Acceptance dated ....., the Contracting Authority has agreed to grant the Contract to the Operator to implement the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

**NOW THEREFORE** in consideration of the foregoing and the respective covenants and agreements set forth in this Contract Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE 1

### 1 Definitions and Interpretations

#### 1.1 Definitions

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

- a) **“Additional Cost”** means the additional capital expenditure which the Operator has or would be required to incur and which has arisen as a result of Change in Law.
- b) **“Agreement”** means this agreement as of date hereof, including Annexures hereto as may be amended, supplemented or modified in accordance with the provisions hereof. The words ‘Agreement’, ‘Contract’ and ‘Contract Agreement’ have been used interchangeably in this document and they all refer to this agreement as of date hereof, including Annexures as may be amended, supplemented or modified in accordance with the provisions hereof.
- c) **“Annexure”** means the schedules, supplements or documents, annexed to this Agreement.
- d) **“Applicable Laws”** means all laws, brought into force and effect by Government of India or any of the state governments, including rules, regulations and notifications made thereunder, 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;
- e) **“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.
- f) **“Applicant”** means [Bidder]<sup>1</sup>
- g) **“Appointed Date”** means one (1) month from the date of signing of this Agreement or the date of completion of all Conditions Precedent, whichever is earlier.

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<sup>1</sup> Name and address of the applicant to be added here

- h) **“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 more than 50% (fifty percent) of the voting securities, by contract, or otherwise.
- i) **“Bid”** means the proposal and the entire set of documents submitted by the Applicant and/or the Consortium in response to the RFP.
- j) **“Change in Law”** shall have the meaning set out under Article 12 of this Agreement.
- k) **“Change of Scope”** means requisition by the Contracting Authority for the provision of additional works and services which are not included in the scope of the Project as per this Agreement.
- l) **“Change of Scope Notice”** means a notice issued by Contracting Authority specifying in reasonable detail the works and services contemplated thereunder, if the Contracting Authority determines that Change of Scope is necessary.
- m) **“Contract Period”** means the period of the OM specified in Article 2 of this Agreement.
- n) **“Conditions Precedent”** shall mean conditions prescribed in Article 3 of this Agreement.
- o) **“Contractor”** means a Person with whom the Operator has entered into/may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services, including the Management Contractor.
- p) **“Commercial Operation Date (COD)”** has the meaning ascribed to it in in Clause 6.3.
- q) **“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/Terminal’s Assets/ Project Facilities and Services.
- r) **“Environmental Law”** means any statute, rule, regulation, ordinance, code, guideline

or policy having the force of law, in each case, applicable to the Project now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

- s) “**Escrow Account**” means the account used for withdrawals and appropriations during the Contract Period as mentioned under Article 9.
- t) “**Escrow Agreement**” means the agreement to be executed inter alia between the Operator, the Contracting Authority and the Escrow Bank substantially in the format set out hereto.
- u) “**Event of Default**” shall have the meaning assigned under Article 15.
- v) “**Expert**” means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant, including the relevant subject-matter expert(s), financial expert(s), industry expert(s) and technical expert(s), for the purpose of this Agreement.
- w) “**Fee Regulations**” means the relevant regulations issued by Assam Inland Water Transport Regulatory Authority (AIWTRA) as amended and notified from time to time.
- x) “**Force Majeure Event**” shall have the meaning ascribed to it in Article 13 of this Agreement.
- y) “**Good Industry Practice**” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.
- z) “**Government Authority**” means Govt. of India, 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 Operator, the Terminal’s Assets, the Project Facilities and Services or any portion thereof, but shall not include the Contracting Authority.
- aa) “**Gross Revenue**” for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions) derived by the Operator from the operation of the Project Facilities and Services and/or any other activity related to the Project, if any, as certified by the statutory auditors of

the Operator, and shall include Revenues and receipts from and on account of managing the operation of passenger ferry and cargo transportation at the terminal and any other services or facility provided by the Operator as per the provision of this Contract.

- bb) For the avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Operator has contracted any associated or incidental services and/or any other activity related to the Project, and any amount received by the Operator from a third party to whom it has contracted any associated or incidental services and/or any other activity related to the Project;
- cc) **“Independent Expert”** means a person appointed in accordance with Article 5 for supervising and monitoring of compliance by the Operator as per Scope of Work, Performance Standards to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Annexure hereto.
- dd) **“Insurance Cover”** shall have the meaning ascribed to it in Article 11.
- ee) **“Material Adverse Effect”** means material adverse effect of any act or event on the ability of either Party to exercise any of its rights or perform any of its duties 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.
- ff) **“Operations Phase”** means the period from the Commercial Operation Date to the expiry/termination of the Contract Period.
- gg) **“Operations and Maintenance Standards”** means the minimum standards of operations and maintenance set out in the Annexure hereto with regards the Project Facilities and Services.
- hh) **“Performance Standards”** means the minimum standards of performance set out in Annexure hereto with regards the Project Facilities and Services.
- ii) **“Performance Guarantee”** shall mean the bank guarantees procured by the Operator for the benefit of the Contracting Authority guaranteeing the performance of the obligations of the Operator hereunder in the manner specified in Article 4.
- jj) **“Project Contracts”** means collectively this Agreement and any other material contract including the Escrow Agreement (other than any commercial agreement with the users) entered into or may hereafter be entered into by the Operator in connection with the Project and Project Facilities and Services.
- kk) **“Project Facilities and Services”** means the facilities and services as set out under the



Scope of Work (as provided in, *inter alia*, Article 7 and Annexure III), to be provided by the Operator during the Contract Period, in accordance with this Agreement.

- ll) **“Project Site”** means the area demarcated in Annexure I including building, link spans, berthing pontoons and easement rights thereto that may be given to the Operator and all other assets comprised therein on which the Operator is authorized to operate the Project Facilities and Services as set forth in this Agreement.
- mm) **“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 Operator.
- nn) **“Transfer Date”** means the date of expiry or termination as the case may be, of the Contract Period in accordance with the terms of this Agreement.
- oo) **“Transaction Documents”** means collectively the RFP and Project Contracts.

## **1.2 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 and /or understanding and /or commitments regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the bid documents, *inter alia* including the RFP documents, issued by the Contracting Authority and also including addendums, clarifications given in writing in the pre-bid meetings and the submissions of the Operator and the bid submitted by the Operator 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:

- i. 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;
- ii. 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);

- iii. the table of contents and any headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation;
- iv. the words “include” and “including” are to be construed without limitation;
- v. any reference to any period of time shall mean a reference to Indian Standard Time;
- vi. any reference to Day shall mean a reference to a calendar Day; any reference to month shall mean a reference to a calendar month;
- vii. “Recital”, “Articles” and “Annexures” shall refer, except where the context otherwise requires, to Articles of and any Annexure to this Agreement. The Annexures 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;
- viii. 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;
- ix. 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 expert 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 expert and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- x. 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;
- xi. unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement; and
- xii. 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.

### **1.3 Measurements and Arithmetic Conventions**

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

### **1.4 Ambiguities and Discrepancies**

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

- i. between two Article of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- ii. between any value written in numerals and that in words, the latter shall prevail; and
- iii. between the provisions of this Agreement and any other documents forming part of it, the former shall prevail.

## **ARTICLE 2**

### **2 Contract Agreement and Terminal Assets**

#### **1.5 Contract Agreement**

In consideration of the Operator agreeing to pay to the Contracting Authority Revenue Share along with performing its obligations as set out in this Agreement, the Contracting Authority hereby grants to the Operator, an exclusive license for operation and maintenance (“O&M”) of the Project Facilities and Services as per Scope of Work defined in Annexure III subject to the provisions of this Agreement.

#### **1.6 Contract Period**

The Contract hereby granted is for a period of 30 ( thirty) years commencing from the COD during which the Operator 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. The Contracting Authority will review the performance of the Operator on completion of the 10<sup>th</sup> year and shall take a decision to continue the Concession based on the performance of Operator in terms of revenue collection, upkeep and management of the terminal, new activities taken up during the evaluation period for enhancing the revenue, proposed plan for augmenting the revenue generation. Provided that, the Contracting Authority would create a mechanism objectively, in consultation with the Operator during the 2<sup>nd</sup> year of the period of evaluation and monitor the performance of the Operator.

Provided that, in the event of an early termination of this Agreement by either Party in accordance with the provisions hereof, the Contract Period shall mean and be limited to the period commencing from the COD and ending with the date of termination of this Agreement.

#### **1.7 Acceptance of the Contract**

The Operator hereby accepts the Contract 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 Operator shall at its costs, charges, expenses and risk including but not limited to foreign exchange

variation risk if any, conceptualize, equip, operate and maintain the Project/ Project Facilities and Services.

### **1.8 Terminal Assets**

In consideration of the Operator agreeing to perform and discharge its obligations as set forth in this Agreement, the Contracting Authority hereby grants to the Operator, the exclusive right to enter upon, occupy and use the Project Site and Terminal Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

The Contracting Authority shall repair, restore, if required, Terminal Assets so that Terminal Assets are in good working condition, prior to granting right to Operator for use of Terminal Assets.

The Operator shall at its costs, charges and expenses make such development and improvements in the Project Site and Terminal 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.

### **1.9 Use of Terminal Assets**

The Operator shall not without the prior written consent or approval of the Contracting Authority use the Project Site and the Terminal Assets for any purpose other than those of the Project/ the Project Facilities and Services and those incidental thereto as permitted under this Agreement or as may otherwise be approved by the Contracting Authority.

### **1.10 Information about Project Site and Terminal Assets**

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

### **1.11 Acceptance of the Project Site and Terminal Assets**

The Operator accepts possession of the Project Site and Terminal Assets on 'as is where is' basis and confirms having:

- a) inspected the Project Site and Terminal Assets as set out in Annexures hereto, including the berths and all structures there and its surroundings;
- b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site and Terminal Assets, the nature of the ground and subsoil, the form and nature of the Project Site and Terminal 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 Operator and its rights and obligations under or pursuant to this Agreement.

### **1.12 Peaceful Occupation**

- a) Handing over physical possession of the Project Site and Terminal Assets as set out in Annexures hereto, free from all encumbrances, after receipt of performance guarantee from the Operator is a Condition Precedent for Contracting Authority. The Contracting Authority warrants that the Operator shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Project Site and Terminal Assets during the Contract Period. In the event the Operator is obstructed by any Person claiming any right, title or interest in or over the Project Site and Terminal Assets or any part thereof or in the event of any enforcement action including any attachment, distress, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Terminal Assets or any part thereof, the Contracting Authority shall, if called upon by the Operator, defend such claims and proceedings. The Contracting Authority represents that the Operator shall be kept indemnified and harmless against any adverse court order or direction in this respect.

## ARTICLE 3

### 3 Conditions Precedent

#### 1.13 Conditions Precedent to be satisfied by the Operator before Appointed Date

- i. The Contract shall be subject to satisfaction or waiver of the following conditions precedent (the “**Conditions Precedent**”)
  - a) Furnishing of the Performance Guarantee as stipulated in Article 4 hereof;
  - b) Furnishing of all resolutions adopted by the Board of Directors of the Operator (certified as true copies by a Director of the Operator) authorizing the execution, delivery and performance by the Operator;
  - c) Opening the Escrow Account and executing the Escrow Agreement;
  - d) Furnishing a certificate from its Director on the shareholding pattern of the Operator;
  - e) Submission of Draft Operational Plan (as detailed in Article 6) within 30 (thirty) Days from the signing of the Contract and submission of final Operational Plan within 30 (thirty) Days from the receipt of the comments from the Contracting Authority.
  - f) Procuring and furnishing the following confirmations, in original, (from the Applicant/all members in case of a Consortium) that the Operator:
    - (i) shall at all times comply with the provisions of Article 10 in respect of its shareholding;
    - (ii) has the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
    - (iii) is duly organized and validly existing under the laws of jurisdiction of its incorporation, and has requested the Contracting Authority to enter into this Agreement with the Operator and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- g) Insurance requirement: The Operator shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:
  - (i) Contractor's all risk insurance;
  - (ii) loss, damage or destruction of Project Facilities and Services, at replacement value;
  - (iii) comprehensive third-party liability insurance including injury or death to personnel of the Contracting Authority and others who may enter the Project Site or the Terminal Assets;
  - (iv) workmen's compensation insurance; and
  - (v) any other insurance necessary to protect the Operator, its employees and its assets and the Contracting Authority, its employees and agents engaged in or connected to the Project and the Project Site and Terminal Assets, against loss, damage or destruction at replacement value, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v) above.
  - (vi) Compliance of statutory clearances and permits for installation and operation including environmental clearances

#### **1.14 Conditions Precedent to be satisfied by the Contracting Authority:**

Handing over physical possession of the Project Site and Terminal Assets as set out in the Annexure hereto in this Contract Agreement, free from all encumbrances, after receipt of performance guarantee from the Operator with the provision that Revenue Share and applicable taxes shall be paid by operator from the date of taking the physical possession.

#### **1.15 Other Requirements**

- i. The aforesaid Conditions Precedent shall be complied within 30 (thirty) days from the date of the signing of this Contract and can be extended based on the mutual agreement between the Contracting Authority and the Operator.
- ii. Any of the Conditions Precedent set forth in Articles 3.1 may be waived fully or



partially by the Contracting Authority at any time in its sole discretion or the Contracting Authority may grant additional time for compliance with these conditions. The Operator shall ensure compliance within such additional time as may be specified by the Contracting Authority. The Operator may waive any of the Conditions Precedent set forth in Articles 3.2 fully or partially at any time in its sole discretion or the Operator may grant additional time for compliance with these conditions.

- iii. In the event that the Conditions Precedents are not complied within the time (including the extended time, if any) in terms of the aforesaid Articles 3, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Operator to comply with Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Contracting Authority, the Contracting 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 3.3 (iii) and forfeiture in this Article 3.3 (iv), each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

## **ARTICLE 4**

### **4 Performance Guarantee**

- (a) The Operator shall for due performance of its obligations provide to Contracting Authority an unconditional and irrevocable bank guarantee, within 15 (fifteen) days of execution of this Agreement, in favour of the Contracting Authority, encashable and enforceable at Guwahati, Assam, substantially in the form set forth in Annexure X (the “Performance Guarantee”). The Performance Guarantee shall be 10 Crore.
- (b) Till such time the Operator provides to Contracting Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid from COD till six (6) months after completion of Contract Period.
- (c) The Operator shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Contracting Authority. This shall be done within 30 (thirty) Days of any such part encashment.
- (d) Failure of the Operator to provide and maintain a valid Performance Guarantee and in accordance with this Article shall entitle the Contracting Authority to terminate this Agreement forthwith and also if relevant, to forfeit the Bid Security.

## ARTICLE 5

### 5 Independent Expert

- (a) The performance of the Operator during the Contract period shall be monitored by an Independent Expert appointed by the Contracting Authority on need basis as and when required.
- (b) Cost of the Independent Expert shall be shared equally between Contracting Authority and Operator.
- (c) The Contracting Authority shall appoint a third-party agency (the “**Independent Expert**”) during the Contract Period on need basis as and when required. Provided that the Contracting Authority shall have the right to appoint any of its agencies or departments or officers to monitor the Project until the Independent Expert is appointed in accordance with this Article 5. The provisions of this Agreement with respect to the Independent Expert shall apply mutatis mutandis to such agency or department until the Independent Expert is appointed in accordance with the provisions of this Article 5 and such provisions shall be repeated after expiry of each appointment.
- (d) Independent Expert shall review performance reports by the Operator and report to the Contracting Authority and Operator.
- (e) Independent Expert shall be responsible to organize and conduct regular joint inspections of the Terminal with the Contracting Authority and the Operator, at a pre – defined time. Report of the joint inspection shall be prepared and shared with the Contracting Authority and Operator by Independent Expert.
- (f) Independent Expert shall also be responsible for ensuring that the Operator meets Performance Standards.
- (g) Independent Expert can provide any Change in Scope, as and when necessary, to improve capacity and efficiency of the Terminal, subject to approval of the Contracting Authority.
- (h) In the event that any damage is caused partly due to the negligence or default or omission on the part of the Contracting Authority and partly due to the negligence

or default or omission on the part of the Operator, Independent Expert has to ascertain the proportion of respective damages. 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.

## **ARTICLE 6**

### **6 Project Implementation**

#### **1.16 Preparation of Operation Plan**

- i. The Operator shall at its cost, charges and expenses, prepare the operation plan (the “**Operation Plan**”) in conformity with the Scope of Work.

#### **1.17 Review of the Operation Plan**

- i. The Operator shall submit the Operation Plan, within 30 (thirty) Days of the signing of the contract, for review of the Contracting Authority.
- ii. The Contracting Authority shall review the Operation Plan submitted by the Operator and provide its observations and suggestions on the same within 30 (thirty) Days from the date of the receipt of such Operation Plan.
- iii. In the event that the Contracting Authority has observed that the Operation Plan is not in conformity with the Scope of Work, the Operator shall promptly and without any undue delay revise and resubmit the Operation Plan or satisfy the Contracting Authority with regards its compliance within 30 (thirty) Days of receiving observations and suggestions.
- iv. The Contracting Authority shall provide a No-Objection Certificate (“NOC”) for operation of the Terminal on basis of Operation Plan submitted by the Operator. If the Contracting Authority does not make any observations with respect to the Operation Plan submitted to it by the Operator within 60 (sixty) days of the submission, it shall be deemed that the Contracting Authority has no objections to the Operation Plan and the Operator is permitted to proceed with the Project according to the Operation Plan.
- v. The initial approved Operation Plan under this Agreement, shall be applicable for first two years from COD. Any subsequent changes in the Operation Plan shall be informed to the Contracting Authority. The Contracting Authority reserve the right to provide comments on the plan.
- vi. Notwithstanding the review by the Contracting Authority, the Operator shall be responsible for any defect and/or deficiency in the Operation Plan relating to the Project or any part thereof, and accordingly, the Operator shall at all times remain

responsible for its obligations under this Agreement.

#### **1.18 Mobilisation Phase**

- i. Mobilisation Phase shall commence after successful completion of Conditions Precedent, as provided in Article 3. This period shall be for 1 month from the Appointed Date, unless mutually extended or shortened by the Contracting Authority and the Operator depending on completion of mobilization by the Operator. Accordingly, the Commercial Operation Date (the “COD”) of the Project shall be the date on which successful completion of Mobilisation Phase occurs.
- ii. The Operator shall promptly commence and complete the works, including mobilization, installation of equipment, if any in accordance with the Operation Plan.
- iii. The Operator shall procure all Applicable Permits before commencing operations, including but not limited to the list as provided in Annexure XI.
- iv. COD of the Contract shall be applicable only after satisfaction of Clause 6.3. It shall not be extended beyond 3 months from the Appointed Date, unless mutually agreed between both the parties.

#### **1.19 Obligations of the Operator**

Without prejudice to the generality of Article 6.3 and in addition to any of its other obligations under this Agreement the Operator shall:

- i. arrange for, in a timely manner all necessary financial and other resources required for installation of the Equipment, if any and Services.
- ii. engage professionally competent Persons for project management and installation and ensure that all works are carried out in compliance with the Operation Plan;
- iii. obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its installation and planning activities in order to protect life, health, property and environment;
- iv. provide to the representatives of the Contracting Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in installation and to ascertain compliance with any of the requirements of this Agreement. Provided that

non- inspection by the Contracting Authority of any works shall not, in relation to such works,

- a) amount to any consent or approval by the Contracting Authority nor shall the same be deemed to be waiver of any of the rights of the Contracting Authority under this Agreement; and
  - b) release or discharge the Operator from its obligations or liabilities under this Agreement in respect of such work;
- v. Promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Expert and ensure timely completion of installation of Equipment and Services in all respects; and
- vi. To ensure safe and timely completion of installation of Equipment and Services, the Operator may, subject to approval of the Contracting Authority, at its cost, interrupt and divert the water or the road traffic or Terminal traffic, adjacent to the Project Site if such interruption and diversion is imperative for efficient progress of installation works and conforms to Good Industry Practice. Such interruption and diversion shall be undertaken by the Operator only with prior written approval of the Independent Expert which approval shall not be unreasonably withheld. For avoidance of doubt, it is agreed that the Operator shall, at all times, be responsible for ensuring safe operation of installation works and shall remove interruption or diversion within the period specified by the Independent Expert.
- vii. Procure necessary insurance covers for Equipment as provided under Article 3.

#### **1.20 Obligations of the Contracting Authority**

In addition to any of its other obligations under this Agreement, the Contracting Authority shall:

- i. in matters falling within its authority, grant, Applicable Permits, approvals and consents as may be required by the Operator and, on a best effort's basis;
- ii. make available all records (such as bathymetric survey, etc.) carried out on its behalf in the Terminal Assets, if requested by the Operator. It is clarified that the Operator shall be solely responsible for determining the adequacy or otherwise of such records

and will not in reliance of such records, be entitled to claim any relief under this Agreement.

#### **1.21 Suspension of Works**

- i. Upon recommendation of the Independent Expert to this effect, the Contracting Authority may by notice require the Operator to suspend forthwith whole or any part of installation works if, in the reasonable opinion of the Contracting Authority, such work is not in accordance with Installation Standards and/or Safety Standards.
- ii. The Operator shall, pursuant to the notice under foregoing provision suspend installation works or any part thereof for such time and in such manner as may be specified by the Contracting Authority and thereupon represent to the Contracting Authority / Independent Expert, measures to remedy defects notified. The Operator may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Contracting Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards suspension of works or remedial measures proposed, if not resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures respectively, shall be submitted for dispute resolution in accordance with Article 21 hereof.

#### **1.22 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 Operator under this Agreement, apart from damages as mentioned in Clause 3.3.3; and Performance Standards as specified in Annexure IV, the Operator shall pay to the Contracting Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every day of delay in fulfilling specified obligations. The Parties agree that liquidated damages as provided are a genuine pre-estimate of the damages the Contracting Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 120 (one hundred and twenty) days, the Contracting Authority shall be entitled to terminate this Agreement and consequences of termination as laid down in Article 15 shall follow. The Contracting Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.



## ARTICLE 7

### 7 Operations and Maintenance

#### 1.23 Obligations of the Operator

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

- i. Berth and Terminal Operations: The Operator shall:
  - a) Promptly commence Commercial operations after the COD;
  - b) Make efforts to maximize revenue generation so as to achieve optimal utilization of the Project Facilities and Services;
  - c) Ensure compliance of 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, subject to the capacity and structural condition of the jetties and the Contracting Authority's approval, during the Contract 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 under normal operating conditions;
  - f) Minimize 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 Contracting 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 revenue earned therefrom;
  - i) Obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to Terminal 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 Contracting Authority is authorized to perform, undertake or provide under provisions of the prevailing acts and rules; and

- k) Prevent, with assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

ii. River and Terminal Services

- a) Scheduling the entry, berthing and sailing of vessels on a non-discriminatory basis subject to priority berthing norms and the sailing schedule;
- b) Provide for/put in place arrangements for provision of supporting Project Infrastructure other than those covered under the Contract Agreement

iii. Repairs and Maintenance: The Operator shall at its own cost:

- a) Repair as necessary and maintain Project Facilities and Services or any part thereof in accordance with Scope of Work and for this purpose carry out routine preventive measures and maintenance of Project Facilities and Services
- 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 Project Facilities and Services to be transferred to the Contracting Authority upon expiry of the Contract Period are in good condition, except for normal and reasonable wear and tear.
- c) Ensure that maintenance Performance Standards as specified in Annexure IV are met.

iv. Replacement of Equipment

- a) The Operator shall at its cost, plan for replacement of equipment well ahead of 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 quality of Project facilities and Services are commensurate with the Scope of Work, at all times during the Contract Period.
- b) However, if any equipment deployed/ provided by the Contracting Authority becomes obsolete, in such case the Operator, after taking prior approval from the Authority, shall replace the equipment at its own cost. The replaced equipment shall be safely returned to the Contracting Authority.

v. Repairs, Replacement or Restoration

The Operator shall at its own costs, promptly and diligently, repair, replace or restore

any of Project Facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever and as recommended by the Independent Expert.

vi. Removal and/or Replacement of Assets

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

vii. Payments to the Contracting Authority

The Operator shall ensure payments to the Contracting Authority as per Article 9.

viii. Access for Inspection

The Contracting Authority, authorized personnel of the Contracting Authority and their respective agents will at all times have access to the Terminal, technical documents, materials, records and accounts relating to such operations for the purpose of inspection and review, consistent with relevant safety procedures. The Operator shall be obliged to extend all co- operation to subject matter Experts appointed by the Contracting Authority for purposes of verifying that Project Facilities and Services are operated and maintained in compliance with Performance Standards and adhere to Operations and Maintenance Standards and Safety Standards. The Operator shall upon prior intimation by the Contracting Authority provide authorized representatives of the Contracting Authority access to Project Facilities and Services for inspection and review of assets and operations and also to ascertain compliance with the requirements under this Agreement. Without prejudice to generality of this provision, it is agreed that the Operator shall in particular extend all co-operation and information required by subject matter experts appointed by the Contracting Authority for conducting a safety audit and verifying that Project Facilities and Services are in strict compliance with Safety Standards.

ix. Reports

The Operator shall provide to the Contracting Authority, Monthly reports on traffic at the terminal, discharge rates at berth, Tariff billed and collected in respect of Project Facilities and Services. The Monthly Report shall be submitted within 15 (fifteen) days

following the end of each month along with any other information relating to Project Facilities and Services which the Contracting Authority may require from time to time. The Operator shall provide reports in prescribed formats and in such electronic form so as to provide online access to the Contracting Authority and its representatives.

x. Computer System and Network

The Operator shall install, operate and maintain such computer system and network and follow such protocol as the Contracting Authority may specify from time to time. In addition, the Operator shall install, operate and maintain an automated system to ensure transparent and accurate reporting of total traffic throughput at the entry and exit gate of the Terminal. The Operator shall ensure live access of the automated system to the Contracting Authority.

xi. Security Arrangements

The Operator may make his own arrangements for security of Project Site and Terminal Assets. The Operator shall abide by the security regulations and procedures prescribed by the Contracting Authority or a competent Government Contracting Authority from time to time.

xii. Employment of personnel and manpower training

- a) The Operator 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 Operator and the Operator 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 Operator prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Operator's responsibility.
- b) The Operator shall adhere to all labour law compliances. The Operator shall also ensure that adequate training is provided to the employees for skill development relevant to industry that would benefit the Terminal and enable knowledge transfer.

xiii. Indemnity against claims for loss of goods

- a) The Operator shall be responsible for addressing any claim, action, suit or

proceeding (“Action”) by any third party alleging loss, destruction or deterioration of goods of which charge has been taken by the Operator and indemnify, save and hold harmless the Contracting Authority, its officers, employees, agents and representatives (“Indemnified Persons”) 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 Indemnified Persons shall be forwarded to the Operator expeditiously and in any case within 30 (thirty) Days of receipt thereof by any of the Indemnified Persons. Provided further that the Indemnified 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 Indemnities 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 Operator.

- b) If the Operator acknowledges in writing its obligation to indemnify the Indemnities in respect of loss to the full extent, the Operator 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 Indemnified and reimburses to them for reasonable cost and expenses incurred by them prior to assumption of such defence by the Operator.
- c) In such case the Indemnified shall not be entitled to settle or compromise any Action without prior written consent of the Operator, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive the termination of this Agreement.

xiv. Maintenance of Complaint Portal

- a) The Operator shall maintain a “Grievance Redressal 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 provision for lodging of complaints. The Grievance Redressal Portal will also be linked to the Contracting Authority website with an alert system for real time access to the complaints.
- b) Operator shall take action for just and fair redressal of the complaint and submit a reply to the complainant within 30 (thirty) days of the date of receipt of the complaint with a copy to Contracting Authority and maintain a proof of reply.
- c) If operator fails to address the complaint and the complainant makes a reference to the Contracting Authority, the Contracting Authority may issue directions that

shall be binding on the Operator. The Contracting Authority shall be just and fair in issuing such directions.

xv. Operation and maintenance of Utilities

The operation and maintenance of Project utilities and related services shall be the responsibility of the Operator.

xvi. Reporting of Performance Standards

The Operator shall report the Performance Standards to the Contracting Authority on a monthly basis.

xvii. Joint Inspection of Operations

The Operator, Independent Expert and Contracting Authority will jointly conduct quarterly inspections in a year, at a pre-defined time. These inspections will be conducted to assess performance of Operator on performance standards and other requirements as part of this Contract. Apart from the joint inspections, Contracting Authority reserves the right to conduct surprise inspections.

xviii. Operation and maintenance of Waste Reception & Treatment Services

The Operator shall arrange the Waste Reception & disposal services through third party for the terminal before COD and provide waste reception services to vessels as per Inland Vessels (Prevention and Containment of Pollution) Rules, 2022 or any amendments thereof.

## **1.24 Rights of Operator**

i. Preferential and priority berthing

The Operator shall not provide any preferential / priority treatment to any party.

## **1.25 Obligations of the Contracting Authority**

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

i. Approvals

The Contracting Authority shall promptly grant approvals sought by the Operator as required under this Agreement subject to the Operator having complied with all

Applicable Laws and requirements.

ii. Additional land, utilities and facilities

In the event that land, utilities and facilities are found to be insufficient by the Operator for providing services as per the scope of work, at any time during the Contract Period, the Operator may approach the Contracting Authority for providing additional land, utilities and facilities. The Contracting Authority on being approached by Operator shall consider the same, subject to reasonableness and availability. The Contracting Authority may provide additional land, utilities and facilities. if considered necessary. If the Contracting Authority is not in a position to provide the same, the Operator shall not be entitled to any relaxation or claims, whatsoever, on the grounds that its request for additional land, utilities and services was not accepted by the Contracting Authority.

**1.26 Rights of Contracting Authority**

- i. If in the reasonable opinion of the Contracting Authority, the Operator is in material breach of its obligations under this Agreement for handling of services at the Terminal, the Contracting Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Operator to take reasonable measures for the Redressal.
- ii. In the event that the Operator, upon receipt of notice above, fails to handle the services at the terminal within a reasonable period, the Contracting Authority may take over performance of any or all obligations of the Operator to the extent deemed necessary by it for handling of services at the terminal provided that such taking over by the Contracting Authority shall be of no greater scope and of no longer duration than is reasonably required.

**1.27 Liability for shortfall in performance**

- i. In the event the Contracting Authority, whether from the review of reports submitted by the Operator or otherwise, observes that Project Facilities and Services fall short of the Performance Standards, the Contracting Authority shall issue a demand notice to the Operator seeking liquidated damages. The liquidated damages shall be calculated in accordance with Annexure IV of this Agreement. The liquidated damages shall be payable within 30 (thirty) days of the date of issue of notice. On failure of the Operator

to pay the same, Contracting Authority shall recover the amount from the Performance Bank Guarantee provided by the Operator.

- ii. Provided that, within 15 (fifteen) days of receipt of demand notice, the Operator may make a written representation to the Contracting Authority which shall be considered by the Contracting Authority on merits. The Contracting Authority may waive the liquidated damages in part or full, if it is satisfied that the Operator has been carrying out its obligations diligently and efficiently and that the performance shortfall to be waived was on account of reasons beyond the control of the Operator.
- iii. It is clarified that this provision does not prejudice the rights of the Contracting Authority upon an Operator Event of Default as set out in Article 14 including the Contracting Authority's right to terminate this Agreement which shall remain unaffected.



## **ARTICLE 8**

### **8 Tariff**

#### **1.28 Levy and Collection of Tariff**

- i. The Operator is entitled to collect and recover appropriate Tariff from the users of the Project Facilities and Services as per the charges specified in the Fee Regulations provided at Annexure XII of this Agreement. The Tariff as per Annexure XII prescribes the maximum tariff that can be levied by the Operator (“Ceiling Tariff”). The relevant Tariffs shall be notified by the Contracting Authority from time to time.
- ii. The Operator shall, subject to Article 8.2 hereunder, deposit all Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Operator or of any other person.

#### **1.29 Statutory Charges**

- i. The Operator shall not deposit any amounts in respect of Statutory Charges collected by it from the users in the Escrow Account.
- ii. The Parties further agree that failure by the Operator to collect or deposit the Statutory Charges would be a material breach of its obligations under the Contract and the Contracting Authority shall have the right to recover any such uncollected or non-deposited Statutory Charges from the Operator, without prejudice to its rights and remedies under clause 15.1.1.

## ARTICLE 9

### 9 Payments to the Contracting Authority

#### 1.30 Payments of Revenue Share

- i. The Operator shall pay to the Contracting Authority a Revenue Share, in percentage, (“**Revenue Share**”) equal to the financial bid quoted by Operator. It shall be the amount in terms of percentage payable by the Operator to the Contracting Authority for managing the terminal and operation of passenger ferry and cargo transportation at the Terminal lease rent, parking fees, berthing charges. advertisement revenue and other incidental revenue as per the terms and conditions of this RFP and the provisions of the Contract.
- ii. Revenue Share payment to the Contracting Authority shall start from three months after the COD and will continue till Termination.
- iii. Revenue Share for each month shall be paid on or before the 20th (twentieth) day of the following month.
- iv. Revenue Share amounts remaining unpaid on respective due dates would carry interest @ 8% (Eight percent) per annum from the due date till the date of payment.
- v. The Operator shall submit a Monthly Report, approved by Independent Expert, to the Contracting Authority showing, among other things, calculation of total Revenue generated through managing the terminal and operation of passenger ferry and cargo transportation at the Terminal lease rent, parking fees, berthing charges. advertisement revenue and other incidental revenue as per the terms and conditions of this RFP and the provisions of the Contract.
- vi. In the event of any disagreement between Operator and Contracting Authority, the decision of the Additional Auditor shall be final in this matter as given in Article 9.3.3.

#### 1.31 Certified accounts

- i. During the subsistence of this Agreement, the Operator shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital expenditure and operational expenses towards the Project; tariffs charged and the amount of money received. The Operator shall submit to the Contracting Authority a financial statement including quantum of users for each facilities for every 6 (six) monthly period ending 30<sup>th</sup> September and 31<sup>st</sup>

March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each such period.

- ii. The Contracting Authority may, at its own cost, appoint a firm of chartered accountants duly licensed to practice in India and empanelled by CAG (“Additional Auditor”) to conduct a special audit of the cargo throughput and the financial statements, documents and supporting evidences thereto as may be mandated by the Contracting Authority (“Special Audit”).
- iii. In the event that the revenue generation 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 Operator shall pay Revenue Share on the revenue generation reported by the Additional Auditor. The Operator shall also pay interest @ 8 % (eight percent) on the difference in revenue generation reported by the Statutory Auditor and the Additional Auditor. Further, the Operator shall reimburse all costs, charges and expenses related to Special Audit. Without prejudice to the aforesaid, if difference between revenue generation reported by the Additional Auditor and the Statutory Auditor is higher than 5% (five percent), the Contracting Authority shall have the right to require a Special Audit for the entire outstanding tenure of the Contract.

### **1.32 Escrow account**

- i. The Operator shall maintain an escrow account with a scheduled bank (“**Escrow Account**”), during the subsistence of this Agreement and ensure all revenues and other receipts arising from the Project and under any agreements, including this Agreement received by the Operator are deposited into such Escrow Account. Withdrawals and appropriations during the Contract Period, at any relevant time, from the Escrow Account shall be in the following order of priority:
  - (a) for all taxes, cess and fee payable to Government of India/ State Government/ Local Authority payable by the Operator for O&M services;
  - (b) all expenses relating to operation and maintenance of Project Facilities and Services;
  - (c) towards payment of Revenue Share and other sums payable to the Contracting Authority and liquidated damages, if any;
  - (d) all development/equipment expenses relating to Project Facilities and Services;
  - (e) the Operator shall be at liberty to withdraw any sums outstanding in Escrow

Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter.

Provided, upon issuance of Termination Notice and/or suspension of the Operator in accordance with provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with written instructions of the Contracting Authority.

- ii. All amounts standing to the credit of Escrow Account at the end of the Contract Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 16 shall be appropriated in following order of priority:

- (a) towards taxes and statutory dues payable by the Operator;
- (b) all amounts due to the Contracting Authority and amounts payable towards transfer of Project Facilities and Services by the Operator in accordance with this Agreement;

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

- iii. The Operator agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

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

For avoidance of doubt, all amounts received by the Operator 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 Contracting Authority or such other Contracting Authority in accordance with the Contract Agreement or pursuant to any other instructions in respect thereof shall be deposited in the Escrow Account.

## **ARTICLE 10**

### **10 Assets: Ownership and Permitted Charge**

#### **1.33 Ownership of Assets**

##### **i. Land and Water Area**

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

##### **ii. Assets created or provided by the Operator**

The ownership of all infrastructure assets, buildings, structures, berths, wharfs, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Operator at Project Site and/or in Terminal Assets pursuant to this Agreement shall, until expiry of or termination of this Agreement, shall always remain vested with the Contracting Authority. Buildings etc. erected by the Operator at Project Site shall not be construed as and shall not confer any rights in Project Site or other Terminal Assets upon the Operator, save as that of a bare licensee.

## **ARTICLE 11**

### **11 General Rights, Duties and Obligations**

#### **1.34 Of the Operator**

i. Applicable Permits

The Operator shall at all times during the Contract Period maintain and comply with the Applicable Permits (Annexure XI).

ii. Taxes & duties

The Operator shall during the Contract Period pay in a timely manner all taxes, duties, levies and charges including but not limited to income tax and goods and services tax 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 Project/ Project Facilities and Services.

iii. Insurance

(a) Insurance Requirement: The Operator shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- (i) contractor's all risk insurance;
- (ii) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- (iii) comprehensive third party liability insurance including injury or death to personnel of the Contracting Authority and others who may enter Project Site or Terminal Assets;
- (iv) workmen's compensation insurance; and
- (v) any other insurance that may be necessary to protect the Operator, its employees and its assets and the Contracting Authority, its employees and agents engaged in or connected to the Project and Project Site and Terminal Assets (against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items above).

(b) Insurance Cover & Insurance Companies: The Operator shall insure all insurable Terminal Assets and Project Facilities and Services, and all insurable risks associated with Project to the extent advisable in accordance with Good Industry Practice ("Insurance Cover"). Insurance of Contracting Authority's assets to be

maintained at least equivalent to the terms and conditions of the insurance of the Contracting Authority's assets before this Contract.

- (c) Evidence of Insurance Cover: The Operator shall, from time to time, provide to the Contracting Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Operator in accordance with this Agreement.
- (d) Application of Insurance Proceeds: All moneys received under insurance policies shall be promptly applied by the Operator towards repair or renovation or restoration or substitution of Terminal Assets and 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 Operator 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 equal or better condition as they were before such damage or destruction, normal wear and tear excepted.
- (e) Validity of Insurance Cover: The Operator shall pay premium payable on such insurance policies so as to keep the policies in force and valid throughout the Contract Period and furnish copies of the same to the Contracting 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 Contracting Authority in writing. If at any time the Operator fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the Contracting Authority may at its option purchase and maintain such insurance and all sums incurred by the Contracting Authority therefor shall be reimbursed with interest @ 6% (six percent) per annum by the Operator forthwith on demand, failing which the same shall be recovered by the Contracting Authority by exercising right of set off or otherwise.
- (f) Waiver of Subrogation: All insurance policies procured in terms of provisions hereof shall include a waiver of any right of subrogation of insurers thereunder against, inter alia, the Contracting Authority and its assigns and successors and their respective subsidiaries, Associates, 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.

iv. Indemnification

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

v. Assignability

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

vi. Engagement of Contractors

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

Provided that:

- (a) the Operator 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 Operator from its obligations or liability hereunder and the Operator shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in construction and erection and/or installation of structures/equipment or any part thereof and for the operation and maintenance of Project/Project Facilities and Services in accordance with provisions of this Agreement;

- (b) the Operator should have obtained, if required, security clearance for the Contractor the Operator intends to engage;
- (c) the Operator shall ensure that Project Contracts contain provisions that entitle the Contracting Authority to step into such contract in its sole discretion in substitution of the Operator in the event of termination or suspension of this Agreement; and
- (d) any contract that it enters with an Associate in respect of the Project shall be on arms- length basis and shall require a written approval from the Contracting Authority.

vii. Condition Survey

- (a) The Operator agrees that at least 6 (six) Months prior to expiry by efflux of time of the Contract Period, it shall, cause to be conducted at its cost by an industry Expert appointed by Parties by mutual consent, a condition survey and an inventory of entire Project Facilities and Services. If, as a result of such survey, the industry Expert shall observe that the Terminal Assets and/or Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with requirements therefor under this Agreement (normal wear and tear excepted) the Operator 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 Operator fails to comply with this provision, the Contracting Authority may itself cause the condition survey and inventory of the Terminal Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Contracting Authority shall be promptly reimbursed by the Operator for costs incurred in conducting such survey and preparation of inventory as also in putting Project Facilities and Services in a good working condition.

- (b) The Operator shall as security for performance of its obligation in preceding sub-Article (a), submit to the Contracting Authority a guarantee issued by a scheduled bank in India for a sum of contract period for 6 (six) months from the expiry of the Contract Period. In the event of Operator's failure to provide such guarantee, the same shall be deemed to be an Operator Event of Default and the Contracting Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15. This shall be over and above the Performance Guarantee submitted in accordance with Article 4.

viii. Cruise Operations

- (a) For cruise operation, Operator shall make appropriate provision by granting preference to the embarkation and disembarkation of tourist and their entry /exit.
- (b) Operator has to ensure that the tourist vehicles/ passengers gets hindrance free way to the passenger terminal.
- (c) Operator shall ensure that the terminal is safe for passengers to disembark and undergo necessary documentation checks.

ix. Hindrance free entry / exit to the officials of the Contracting Authority

The Operator shall provide hindrance free entry / exit to the officials of the Contracting Authority at the Terminal and Contracting Authority's offices that are situated inside the terminal.

x. Negative List of Non-Operating Activities

The Operator shall strictly prohibit from performing any of the activities, as ascribed in Annexure XIII, on the Project Site.

### **1.35 Of the Contracting Authority**

i. Assistance in obtaining approvals, permits and licenses

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

ii. General rights of inspection and verification

The Contracting Authority may during pendency of the Agreement itself or by appointment of subject matter Experts verify performance of obligations of the Operator

as set out in this Agreement.

### **1.36 Of the Contracting Authority and the Operator**

#### **i. Monitoring Arrangement**

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Annexure IX “Monitoring Arrangement”

#### **ii. Compliance with Laws and Regulations**

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

#### **iii. Rights to Documents**

- a) Contracting Authority’s Documents: Documents and computer programs or copies thereof, if any, provided by the Contracting Authority to the Operator, shall always remain property of the Contracting Authority. Such documents, computer programs and/or copies shall not be used by the Operator for purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Contracting Authority, be returned by the Operator to the Contracting Authority on Transfer Date.
- b) Operator’s Documents: Documents and computer programs provided by the Operator, or which are developed (and owned by the Operator) for operation and/or maintenance of Project /Project Facilities and Services shall be handed over by the Operator to the Contracting Authority free of cost on the Transfer Date.
- c) 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 Contract Period.
- d) Obligation to Cooperate: The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

### **1.37 Assistance of Expert**

- i. The Parties, may, in circumstances mentioned in the instant Contract Agreement and other appropriate circumstances seek help of an Expert on case to case basis. The

Parties shall ensure that the Expert proposed to be appointed is independent and has no conflict of interest and possesses the skill and experience to resolve the issue at hand. The cost of the service of the Expert shall be shared equally.

- ii. The Contracting Authority shall propose the name of three Experts proposed to be appointed and the Operator shall be required to choose one of them no later than 30 (thirty) days from date of proposal by Contracting Authority to act as Expert for the issue at hand.
- iii. The Expert shall be expected to resolve the issues referred to him expeditiously and the Parties shall ensure that all necessary and reasonable assistance is provided to the Expert.

## **ARTICLE 12**

### **12 Change in Law**

#### **1.38 Change in law**

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

- i. adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- ii. the imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Operator of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Operator of any of the terms of this Agreement impossible or unviable; or
- iii. Any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Operator or if granted for a limited period, being renewed on terms different from those previously stipulated.
- iv. Any imposition of new Taxes except a new Direct Tax (both State and Central), duties, cess and the like and/or the increase in Taxes except in Direct Taxes (both State and Central), duties, cess and the like effected from time to time by any Government Authority, and/or imposition of standards and conditions of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or imposition of standards and terms of employment and working conditions of Labourers and Workmen; and/or any rules or regulations stipulated by acts or other regulatory authority having jurisdiction over the Project in respect of standards of service. A change in the interpretation or application of any Indian Law by the judgement of a court of record which has become final and binding in place of such interpretation or application of law by a court of record prior to the bid due date

#### **1.39 The Operator’s Remedy**

- i. In the event of Change in Law the Operator may propose to the Contracting Authority modifications to the relevant terms of this Agreement which are reasonable and

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

- ii. In the alternative to the aforesaid, subject to the Operator taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Operator is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 50 Lakh may at the option of the Contracting Authority be borne by the Contracting Authority. It is clarified that Additional Cost up to Rs. 10 Lakh in any accounting year shall be borne by the Operator;
- iii. Upon occurrence of a Change in Law, the Operator shall notify the Contracting Authority, of the following:
  - a) the particulars, nature and the impact of Change in Law on the Project;
  - b) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Operator on account of the Change in Law; and
  - c) the measures, which the Operator has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.
- iv. Upon receipt of the notice of Change in Law issued by the Operator pursuant to the preceding sub-article 12.2 (iii), the Contracting Authority and the Operator shall hold discussions and take all such steps as may be necessary including determination/certification by a financial Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.
- v. If it is determined that the only material impact of a Change in Law is Additional Cost and the Contracting Authority opts to compensate the same in accordance with the preceding sub-article 12.2 (ii), the Operator shall not be entitled to any other remedy

nor shall seek any alterations to the Agreement and the Contracting Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Contracting Authority in accordance with sub-article 12.2 (ii) above, compensate the Operator by lump-sum reimbursement of such Additional Cost to the Operator;

- vi. Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Operator shall not be entitled to any remedy under this Article 12.2

## ARTICLE 13

### 13 Force Majeure

#### 1.40 Force Majeure Event

- i. 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 13.2, 13.3 and 13.4 respectively including the impact/consequence thereof which:
  - a) is beyond the control of the Party claiming to be affected thereby (the “Affected Party”);
  - b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and
  - c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

#### 1.41 Non-Political Events

- i. 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, pandemic, epidemic, extreme adverse weather conditions, lightning, earthquake, cyclone, 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 Operator or the Contractor or any of the employees or agents of the Operator or the Contractor);
  - b) strikes or boycotts (other than those involving the Operator, 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 13.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Operator 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 Operator 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.

#### **1.42 Political Events**

Any of the following events shall constitute Political Event:

- a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;
- b) action of a Government Authority having Material Adverse Effect including but not limited to:
  - (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Operator'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 Operator'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 Operator or the Contractor as the case may be is bound;
  - (iii) early termination of this Agreement by the Contracting Authority for reasons of national emergency, national security or the public interest;
  - (iv) any failure or delay of the Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Operator by or on behalf of the Contractor; or
  - (v) any event or circumstance of a nature analogous to any of the foregoing.

#### **1.43 Other Events**

- i. 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 30 (thirty) 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 Statewide strikes or industrial action;
- c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Operator;
- d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Operator or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Operator; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Operator or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Operator other than relating to proceedings
  - (i) pursuant to failure of the Operator 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 Contracting Authority; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

#### **1.44 Notice of Force Majeure Event**

- i. 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.
- ii. The Notice shall inter-alia include full particulars of:
  - a) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - b) 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;
  - c) 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
  - d) any other relevant information.

- iii. 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 13.5 (ii) and such other information as the other Party may reasonably request.

#### **1.45 Period of Force Majeure**

- i. 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 13.7; or
  - b) termination of this Agreement pursuant to Article 13.10 hereof.

#### **1.46 Resumption of Performance**

- i. 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.

#### **1.47 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.

#### **1.48 Costs, Revised Timetable**

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

ii. Extension of time/period

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

**1.49 Termination due to Force Majeure Event**

- i. 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 15 and 16 shall, to the extent expressly made applicable, apply.

## **ARTICLE 14**

### **14 Events of Default**

#### **1.50 Events of Default**

Event of Default means the Operator Event of Default or the Contracting Authority Event of Default or both as the context may admit or require.

i. The Operator Event of Default

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

- a) Operator's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- b) Date of Commercial Operations is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- c) Delay in payment of Royalty for more than 2 (two) months from the due date;
- d) Operator'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;
- e) Any representation made or warranties given by the Operator under this Agreement is found to be false or misleading;
- f) The Operator passing a resolution for voluntary winding up;
- g) Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Operator by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- h) Levy of an execution or distrain on the Operator'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 distrain remaining in force for a

period exceeding 90 (ninety) Days;

- i) The Performance Guarantee is not maintained in terms of the provisions hereof;
  - j) The Operator abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
  - k) A change in shareholding such that the beneficial interest of the Applicant/Consortium in the Operator reduces below the limits set in Article 10.2 and/or Management Control of the Operator has occurred in contravention of the provisions of Article 10 hereof;
  - l) Amalgamation of the Operator with any other company or reconstruction or transfer of the whole or part of the Operator's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 10 hereof; and
  - m) The Operator 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.
  - n) Operator fails to maintain the required Insurance Cover as mentioned in the Article 11 of this Contract Agreement.
  - o) The Operator undertakes any activity which is part of negative list for non-operational activities as provided in Annexure XIII.
- ii. The Contracting Authority Event of Default
- a) The Contracting 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 Operator Event of Default or a Force Majeure Event.
  - b) Any representation made or warranties given by the Contracting Authority under this Agreement is found to be false or misleading.

- c) Levy of an execution or distrain on the Terminal Assets in any proceedings against the Contracting Authority (unless such proceedings are initiated as a consequence of any Operator Event of Default) which has or is likely to have Material Adverse Effect and such execution or distrain remaining in force for a period exceeding 90 (ninety) Days.

#### **1.51 Parties Rights**

- i. Upon the occurrence of an Operator Event of Default, the Contracting Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Contract Agreement.
- ii. Upon the occurrence of a Contracting Authority Event of Default, the Operator shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Contract Agreement.

Provided that before proceeding to terminate this Contract 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.

#### **1.52 Consultation Notice**

- i. Either Party exercising its right under Article 14.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default (“**Consultation Notice**”).

#### **1.53 Remedial Process**

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree (“**Remedial Period**”) the Parties shall endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Operator Event of Default, the Contracting Authority shall 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 associated circumstances:

- i. the change of management or control/ownership of the Operator;

#### **1.54 Obligations during Remedial Period**

- i. 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.

#### **1.55 Revocation of Consultation Notice**

- i. If during the Remedial Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Article 1.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

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

- i. If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties have agreed upon any of the measures in accordance with Article 14.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 15 and 16 shall, to the extent expressly made applicable, apply.

#### **1.57 Contracting Authority's Rights of Step-in**

- i. Upon a Termination Notice being issued due to an Operator Event of Default, the Contracting 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 Operator and any Person claiming through or under the Operator from entering upon/dealing with the Project Facilities and Services;
  - c) step in and succeed upon election by Contracting Authority without the necessity of any further action by the Operator, to the interests of the Operator under such of the Project Contracts as the Contracting 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.



- ii. The Operator acknowledges that any payments made by the Contracting Authority during the Remedial Period shall be adjusted against compensation payable by the Contracting Authority to the Operator in terms of the provisions of this Agreement.

## ARTICLE 15

### 15 Termination of Contract Agreement

#### 1.58 Termination Procedure

- i. The Party entitled to terminate this Contract 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. 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.

#### 1.59 Obligations during Termination Period

- i. During Termination Period, the Parties shall, subject where applicable to the provisions of this Article 15, 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.

#### 1.60 Requisition

- i. 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 Contract Period, the Contracting Authority shall by a notice in writing (“**Requisition**”) call upon the Operator to furnish the following information to enable the Contracting Authority to estimate the likely compensation payable by the Contracting Authority to the Operator and/or to finalise the items of Operator’s assets comprised in the Project Facilities and Services to be handed over to/taken over by the Contracting Authority:
  - a) data or records including test certificates, survey reports, inspection reports, records of maintenance, statutory certificates issued for operation and establishment of the project facilities and services and regarding the operation and maintenance of the Project Facilities and Services;

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

#### **1.61 Condition Survey**

- i. The Operator agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Contract Period, as the case may be, it shall conduct or cause to be conducted under the Contracting Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Terminal Assets to ascertain the condition thereof, verifying compliance with the Operator's obligations under this Contract 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 Contracting 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 Contracting Authority on the Transfer Date.
- ii. If, as a result of the condition survey, the Contracting Authority shall observe/notice that the Project Site and/or the Terminal 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 Contract Agreement (normal wear and tear excepted) the Operator shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- iii. In the event the Operator fails to comply with the provisions of this Contract Agreement, the Contracting Authority may itself cause the condition survey and inventory of Terminal Assets and the Project Facilities and Services to be conducted. The Contracting Authority shall be compensated by the Operator 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.

## **1.62 Consequences of Termination**

- i. Without prejudice to any other consequences or requirements under this Contract Agreement or under any law:
  - a) the Contracting Authority reserves the right to accept or reject transfer of any/all the assets and rights upon expiry of the Contract 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 14;
  - b) the Contracting Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Operator against any amounts owing to the Contracting Authority by the Operator.
- ii. Notwithstanding anything contained in this Contract Agreement, except for ensuring the deposit of the compensation payable to the Operator in accordance with Article 16 in the Escrow Account, the Contracting 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 Operator in connection with the Project, and the handback of the Project Site/Terminal Assets/Project Facilities & Services by the Operator to the Contracting Authority shall be free from any such obligation.

## **ARTICLE 16**

### **16 Compensation**

#### **1.63 Compensation**

- i. Termination due to Force Majeure Event
  - a) If the termination is due to a Non-Political Event, no party will be obligated for any payment
  - b) If the termination is due to an Other Event compensation payable to the Operator by Contracting Authority should be equal to 10% of Gross Revenue for last 3 months.
  - c) If termination is due to a Political Event, compensation payable to the Operator shall be the same as that stipulated for termination due to a Contracting Authority Event of Default under Article 14 and payable as Article 17.

Provided, no compensation shall be payable to the Operator if the Operator fails to maintain Insurance Cover as contemplated under Article 11 of this Contract Agreement.

- ii. Termination due to Operator Event of Default

If the termination is after the Date of Commercial Operation, due to an Operator Event of Default, no compensation shall be payable to the Operator. Operator shall pay the compensation to the Contracting Authority as follows:

- a) From COD till the date of the operator default: Performance Bank Guarantee will be revoked;
- b) In case Contracting Authority decides to purchase the handling equipment installed by the Operator, an Independent Valuator will be appointed at the joint cost of the Operator and Contracting Authority to evaluate current Market Value of the equipment.
- c) In case the handling equipment is on lease, the lease agreement between Operator and Equipment Owner may be transferred to the Contracting Authority

at the same or better terms.

The decision to purchase and/or transfer of lease shall be at the sole discretion of the Contracting Authority. In case the Contracting Authority decides not to purchase and/or transfer lease on its name, the Operator shall safely remove the handling equipment, at its own cost, without causing any damage to the Terminal Assets.

iii. Termination due to Contracting Authority Event of Default

If the termination is due to a Contracting Authority Event of Default, the compensation payable by the Contracting Authority shall be as follows:

- a) From COD till end of Contract Period: Higher of INR 25 Lakh or 10% of Gross revenue of the Operator in the last 12 months from the date of issue of Termination Notice.
- b) In case Contracting Authority decides to purchase the handling equipment of the Operator, an Independent Valuator will be appointed at the joint cost of the Operator and Contracting Authority to evaluate current Market Value of the equipment.
- c) In case the handling equipment is on lease, the lease agreement between Operator and Equipment Owner will be transferred to the Contracting Authority at the same or better terms.

The decision to purchase and/or transfer of lease shall be at the sole discretion of the Contracting Authority. In case the Contracting Authority decides not to purchase and/or transfer lease on its name, the Operator shall safely remove the handling equipment, at its own cost, without causing any damage to the Terminal Assets.

- d) The compensation payable by the Contracting Authority will also include Book Value of any fixed asset created by the Operator for the Project.

Provided, no compensation shall be payable to the Operator if the Operator fails to maintain Insurance Cover as contemplated under Article 11 of this Contract Agreement.

**1.64 No Compensation on Expiry of Contract Period**

- i. In the event of expiry of Contract Agreement by efflux of time (the Contract Agreement having run its full course), the Operator shall hand over/ transfer peaceful possession of the Project Site including land, Terminal Assets (as per Annexure II) and the Project Facilities and Services free of cost and Encumbrance.

#### **1.65 Transfer Fee and Charges**

- i. 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 Contract Agreement shall be borne by:
  - a) the Operator in the event of expiry of Contract Period or termination due to an Operator Event of Default;
  - b) the Contracting Authority in the event of termination due to a Contracting 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.

#### **1.66 Delayed Transfer of Assets**

- i. If for any reasons other than those attributable to the Contracting Authority the Operator fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 15.5 read with Article 17, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Operator shall, as a trustee of the Contracting Authority,
  - a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Contracting Authority until completion of the relative transfer formalities; and
  - b) account for and pay to the Contracting Authority the Project Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Operator shall be liable to pay to the Contracting Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not

in the nature of a penalty. Provided nothing contained in this Article 16.5 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Operator to the Contracting Authority in accordance with the requirements thereof under this Contract Agreement.

- ii. In case the transfer of assets by the Operator to the Contracting Authority is delayed for reasons attributable to the Contracting Authority, the Operator shall nonetheless continue to operate the Project Facilities and Services but as agent of the Contracting Authority. Provided however, the Operator shall be liable to pay Revenue Share in accordance with Article 9.

#### **1.67 Remedies Cumulative**

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



## **ARTICLE 17**

### **17 Transfer on expiry of Contract Period**

#### **1.68 General Scope of Transfer/Payment**

- i. The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Contract Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 15, 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 17.2 and 17.3.

#### **1.69 Operator's Obligations**

The Operator shall:

- i. hand over peaceful possession of the Project Site, Terminal Assets (as per Annexure II), the Project and the Project Facilities and Services free of Encumbrance;
- ii. transfer all its rights, titles and interests in the assets (apart from Annexure II) comprised in the Project Facilities and Services which are mutually agreed, by Contracting Authority and Operator, to be transferred to the Contracting Authority in accordance with this Contract 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;
- iii. hand over to the Contracting Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- iv. transfer technology and up-to-date know-how relating to operation and maintenance of the Terminal Assets and/or the Project Facilities and Services;
- v. transfer or cause to be transferred to the Contracting Authority any Project Contracts which are:
  - a) valid and subsisting;
  - b) capable of being transferred to the Contracting Authority; and

- c) those the Contracting Authority has chosen to take over and cancel or cause to be cancelled such Project Contracts not transferred to the Contracting Authority. For this purpose, the Operator shall ensure that all Project Contracts are assignable in favor of the Contracting Authority without any further action on part of the respective counterparties. The Operator 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 Contracting Authority;
- vi. at its cost, transfer to the Contracting Authority all such Applicable Permits which the Contracting Authority may require and which can be legally transferred. Provided if the termination is on account of Contracting Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Contracting Authority;
- vii. at its cost, remove within 90 (ninety) days from expiry of the Contract Period, from the Project Site/Terminal Assets, any moveable assets that are not taken over by or not to be transferred to the Contracting Authority in terms of the provisions of this Contract Agreement.
- viii. In case, Operator fails to comply with Clause 18.3 (vii), Contracting Authority shall take over the site and shall forfeit the Performance Bank Guarantee submitted by the Operator.

#### **1.70 Contracting Authority's Obligations**

- i. Except in the event of expiry of the Contract Agreement by efflux of time, the Contracting Authority shall pay compensation payable to the Operator in accordance with Article 16.1 of this Contract Agreement or deposit the same in the Escrow Account, as the case may be. The Operator confirms that upon such payment being made, the Contracting Authority shall stand duly discharged of its obligations regarding payment of compensation under this Contract Agreement and all such assets shall on and from the Transfer Date be free from such charge.
- ii. The Operator further confirms that payment of compensation by Contracting Authority in accordance with this Article 17.3 shall be a valid discharge to the Contracting Authority in respect of Contracting Authority's obligation regarding payment of compensation to the Operator under this Contract Agreement.

**1.71 Risk**

- i. Until transfer in accordance with this Article 17, the Terminal Assets and the Project Facilities and Services shall remain at the sole risk of the Operator except for any loss or damage caused to or suffered by the Operator due to any act or omission or negligence on the part of the Contracting Authority under this Contract Agreement.

## **ARTICLE 18**

### **18 Dispute resolution**

#### **1.72 Amicable settlement**

- i. If any dispute or difference or claims of any kind arises between the Contracting Authority and the Operator in connection with 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/mediation between them.

#### **1.73 Assistance of Expert**

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

#### **1.74 Arbitration**

- i. Arbitration

Failing amicable settlement and/or settlement with the assistance of an expert appointed by the parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996 and any amendments thereof. The arbitration shall be presided over by a Sole Arbitrator. Upon invocation of Arbitration by either party, the Contracting Authority shall within 7 days, propose three names to the Operator. The Operator shall have the right to choose one name as the Arbitrator. Failing any agreement on the name of the Arbitrator, the arbitrator shall be appointed by the Court in terms of Section 11 of the Act.

- ii. Seat of Arbitration

The seat of Arbitration shall be Guwahati, Assam, India.

iii. Language of Arbitration shall be in English language only.

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

iv. Procedure

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

v. Enforcement of award

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

vi. Fees and expenses

The fees and expenses of the arbitrator and all other expenses of the arbitration shall be equally borne by both parties.

vii. Performance during arbitration

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

## **ARTICLE 19**

### **19 Representations and warranties**

#### **1.75 Representations and warranties of the Operator**

The Operator represents and warrants to the Contracting Authority that:

- i. 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;
- ii. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- iii. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- iv. this Agreement constitutes the legal, valid and binding obligation of the Operator, enforceable against it in accordance with the terms hereof;
- v. 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;
- vi. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- vii. 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;
- viii. 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;

- ix. 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;
- x. all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Contracting 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 Contracting Authority, and that none of the Project Terminal 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;
- xi. no representation or warranty by it contained herein or in any other document furnished by it to the Contracting 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;
- xii. 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 Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Contracting Authority in connection therewith;
- xiii. 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
- xiv. 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.

**1.76 Representations and warranties of the Contracting Authority**

The Contracting Authority represents and warrants to the Operator that:

- i. it is duly organised, validly existing and in good standing under the laws of India;
- ii. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- iii. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- iv. this Agreement constitutes the legal, valid and binding obligation of the Contracting Authority, enforceable against it in accordance with the terms hereof; and
- v. 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.

**1.77 Disclosure**

- i. 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 20**

### **20 Miscellaneous provisions**

#### **1.78 Amendments**

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specified purpose for which given.

#### **1.79 Agreement to override other Agreements**

This Agreement supersedes all previous agreements or arrangements between parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the parties in relation thereto.

#### **1.80 Survival of Obligations**

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Contract 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 Contract Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Contract Period/ termination of this Agreement.

#### **1.81 Articles to survive Termination**

The provisions of Articles 15 to 20 shall, to the fullest extent necessary to give effect thereto, survive the Contract 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.

#### **1.82 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.

### **1.83 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 Contract Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Contract 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.

### **1.84 Waiver; remedies**

No failure on the part of any party to exercise, and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are the cumulative and not exclusive of any remedies provided by applicable law.

### **1.85 Severance of terms**

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal, by any competent arbitral tribunal or court, such invalidity, un-enforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect and shall not be affected by such void.

### **1.86 Language**

All notices, certificates, correspondence or other communications under or in connection with this Agreement, and Project contracts, if any, or the Project shall be in English.

### **1.87 Confidentiality**

- i. No Party shall, without the prior written consent of the other Parties, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any person or use for any purpose unconnected with the Project any information which is, by its nature or it marked “proprietary material”, concerning the other (including any information concerning the contents of this Agreement) except to their respective officers, directors, employers, agents, representatives and professional advisors or as

may be required by any law, rule, regulation or any judicial process for period of five years after the transfer date; provided, however, that any Party, with the written consent of the other Parties, may issue press releases containing non- sensitive information in relation to the progress of the Project. This article shall not apply to information:

- a) Already in the public domain, otherwise than by breach of this Agreement.
- b) Already in the possession of the receiving party before it was received from any other party in connection with this Agreement and which was not obtained under any obligation of confidentiality; or
- c) Obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.
- d) Disclosure to lenders under terms of confidentiality.

#### **1.88 Notices**

Any notice to be given thereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

The Contracting Authority:

Managing Director, AIWCL

\_\_\_\_\_  
\_\_\_\_\_

Email:

The Operator:

The Authorised Representative

\_\_\_\_\_  
\_\_\_\_\_

Email:

or such other address, telex number, or facsimile number as may be notified by that party

to the other Party 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, 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.

**1.89 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 20.7 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

**1.90 Amendments, Modifications or Alterations.**

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

**1.91 Governing Law**

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

**1.92 Entire Agreement**

This Agreement and the Annexures 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 Annexures, 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:

Signed and Delivered by the Contracting Authority

Signed and Delivered by the Operator

## **ANNEXURE**

Architectural drawing of the East River Tunnels, showing a plan view at bulkhead level. The drawing includes a north arrow, a scale bar, and a detailed cross-section of the tunnel structure. The plan view shows the layout of the tunnels, including the main tunnel, service tunnels, and ventilation tunnels. The cross-section shows the internal structure of the tunnel, including the main tunnel, service tunnels, and ventilation tunnels. The drawing is labeled 'PLAN AT BULKHEAD LEVEL' and includes a title block with project information.

**REFERENCE DRAWING:**

NO.	DRAWING NO.	DATE
1	0-00000-01-00-10-00-000	10/10/00
2	0-00000-01-00-10-00-000	10/10/00
3	0-00000-01-00-10-00-000	10/10/00
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5	0-00000-01-00-10-00-000	10/10/00
6	0-00000-01-00-10-00-000	10/10/00
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9	0-00000-01-00-10-00-000	10/10/00
10	0-00000-01-00-10-00-000	10/10/00

**LEGEND:**

SYMBOL	DESCRIPTION
1	MAIN TUNNEL
2	SERVICE TUNNEL
3	VENTILATION TUNNEL
4	WALKWAY
5	STAIR
6	ELEVATOR
7	MECHANICAL ROOM
8	RESTROOM
9	LOCKER ROOM
10	STORAGE ROOM

**NOTES:**

1. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE SPECIFIED.
2. MATERIALS SHALL BE AS SPECIFIED IN THE SPECIFICATIONS.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AIAA, ASME, AND NFPA STANDARDS.
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**APPENDIX:**

1. GENERAL NOTES

2. MATERIALS

3. CONSTRUCTION

4. MAINTENANCE

5. SAFETY

6. ENVIRONMENTAL

7. HEALTH

8. SOCIAL

9. ECONOMIC

10. LEGAL

11. POLITICAL

12. CULTURAL

13. RELIGIOUS

14. ETHNIC

15. RACIAL

16. SEXUAL

17. GENDER

18. AGE

19. DISABILITY

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## **ANNEXURE II: TERMINAL ASSETS**

The Terminal Assets are listed below:

- Berthing Pontoons
- Dolphins for berthing Pontoons
- Steel Linkspans
- Intermediate Pontoons
- Dolphins for intermediate Pontoon
- Terminal building: The terminal building with all ancillary facilities and provisions as listed below:
  - Waiting areas for passengers
  - Emergency service facilities
  - Toilet facilities. The toilet facilities for M/F and differently abled including nursing/crèche area for women.
  - Security check areas
  - CCTV Surveillance Camera, EPABAX System and PA Systems for All locations.
  - High mast Light – 30m Height and Street Lights.
  - Ticketing booths
  - Parking areas
  - Drinking Water facility
  - Open area
  - Offices, shops and food court
  - Entry exit Gates



- Access to ferry services by disabled persons including provision of signage of appropriate visibility and equipment's for audio announcements, compatible with a variety of techniques or devices used by people with sensory limitations.
- Space for utilities / infrastructure requirements
- Master Harbour Room for ferry services
- Observatory Deck
- Waiting Lounge
- Storage Areas
- First aid room, Electric room, Baby care room, etc.
- Terminal building supporting platform
- Utilities and services
  - Inert Gas system, Sprinkling system,
  - Fire Extinguisher,
  - Fire Hydrant,
  - Fire Water Tank (137 M3 X 2 nos. : 6.0 X 5.0 X 6.0m)
  - Raw water and clarified water tank (2.35 X 5.0 X 3.8 m X 2 no's : 30 m3)
  - Sewage Treatment Plant (STP) (100 KLD capacity : 5.0m X 9.7mX 4 m)
- Entry & Exit Ramps

### **ANNEXURE III: SCOPE OF WORK**

The scope of work (“**Scope of Work**”) shall mean and include the following, but not limited to:

1. **Berth and Terminal Operations:** This includes promptly commencing commercial operations after the Commercial Operation Date (COD), maximizing revenue generation, ensuring compliance with the Scope of Work, and being free to deploy higher capacity equipment and new technology with approval. The Operator must ensure safe and smooth traffic flow, minimize traffic disruption during incidents, and provide all necessary resources for operation, maintenance, repair, and replacement. They are also responsible for maintaining proper records, obtaining and complying with Applicable Permits and Laws related to safety, health, environment, and labor. Additionally, they must perform services the Contracting Authority is authorized to provide and prevent unauthorized use of the facilities.
2. **River and Terminal Services:** This involves scheduling vessel berthing and sailing on a non-discriminatory basis (subject to priority berthing norms) and providing arrangements for supporting project infrastructure not covered under the agreement.
3. **Repairs and Maintenance:** The Operator is responsible for necessary repairs and maintenance of the Terminal Facilities and Services according to the Scope of Work, including routine preventive measures. They must maintain the facilities in accordance with the agreement and Good Industry Practice to ensure adequate service standards and good condition for transfer at the end of the contract period (normal wear and tear excepted). They also need to meet the maintenance Performance Standards specified in Annexure IV.
4. **Replacement of Equipment:** The Operator is responsible for planning and replacing equipment at their own cost based on Good Industry Practice to maintain service quality.
5. **Repairs, Replacement, or Restoration:** The Operator must promptly and diligently repair, replace, or restore any damaged or destroyed part of the Project Facilities and Services at their own cost, as recommended by the Independent Expert.
6. **Removal and/or Replacement of Assets:** Without prior written notice, the Operator cannot remove or replace any assets forming part of the Project Facilities and Services.
7. **Payments to the Contracting Authority:** The Operator must ensure payments to the Contracting Authority as per Article 9.
8. **Security Arrangements:** The Operator/Concessionaire can make their own security arrangements but must abide by regulations prescribed by the Contracting Authority or a competent government authority. They must also conform to prevailing regulations and IMO

requirements.

9. Operator will be responsible for safety, security and cleanliness of the terminal.
10. The Operator is entitled to collect tariff from users as per the Fee Regulations (Annexure XII) which prescribe the maximum tariff ("Ceiling Tariff"). The Contracting Authority will notify the relevant Tariffs from time to time.

## **ANNEXURE IV: PERFORMANCE STANDARDS AND DAMAGES FRAMEWORK**

### **1. Objective**

This annexure sets out the minimum performance standards and the corresponding damages framework that the Operator shall comply with during the Contract Period. These standards cover operations, maintenance, safety and environmental compliance, financial obligations, and reporting requirements.

### **2. Performance Standards**

#### **A. Operational Performance**

<b>Indicator</b>	<b>Requirement</b>	<b>Frequency</b>
Terminal Cleanliness & Hygiene	Daily cleaning; restrooms cleaned at least thrice a day	Monthly
Passenger Handling	Max 15 minutes average boarding/disembarkation per ferry	Monthly
Equipment Uptime	≥ 95% uptime for ticketing, CCTV, etc.	Monthly
Grievance Redressal	100% acknowledged within 48 hrs, resolved within 30 days	Monthly
Complaint Portal Accessibility	24/7 functional portal linked to Contracting Authority with real-time alerts	Monthly

#### **B. Maintenance Performance**

<b>Indicator</b>	<b>Requirement</b>	<b>Frequency</b>
Preventive Maintenance Schedule	Adherence to manufacturer-recommended and approved schedules	Quarterly
Asset Condition	All major assets in good condition, normal wear and tear excepted	Annually
Structural Repairs	Prompt rectification of minor structural issues within 7 days	As required
Replacement Planning	Submission of replacement plan for critical equipment nearing end of life	Annually

#### **C. Safety and Environmental Compliance**

Indicator	Requirement	Frequency
Accidents/Incidents	Zero fatal incidents; not more than one minor incident per month due to negligence	Monthly
Fire Safety Equipment	100% functional and inspected quarterly	Quarterly
Emergency Response Readiness	Mock drills conducted every 6 months; all staff trained	Bi-annually
Waste Management	Waste Reception & Treatment Services fully compliant with 2022 Rules	Monthly
Environmental Clearance	All necessary approvals obtained and maintained	Annually

#### D. Financial Compliance

Indicator	Requirement	Frequency
Revenue Share Payment	As per contract terms, within due dates	Monthly
Escrow Account Maintenance	All tariff and receipts deposited as per Article 9	Monthly
Tax and Cess Remittance	Collection and remittance of notified cesses/charges	Monthly
Performance Guarantee	Maintained as per Article 4	Ongoing

#### E. Reporting & Documentation

Indicator	Requirement	Frequency
Monthly Performance Report	Traffic, cargo, discharge rate, tariff collected, complaint summary	By 15th of each month
Incident/Accident Reports	Detailed report within 48 hrs of any reportable incident	As required
Audit Trail and Access Logs	Maintain and make accessible to Contracting Authority upon request	Ongoing
Safety Audit Report	Submission of third-party audit report	Annually

#### Damages and Penalty Structure

Defaults Type	Penalty
Delay in equipment repair	₹10,000/day after 3-day grace
Non-submission of monthly reports	₹5,000 per delayed report

<b>Defaults Type</b>	<b>Penalty</b>
Unresolved complaint after 30 days	₹1,000 per complaint
Safety violation (minor)	₹20,000 per incident
Safety violation (major/fatal)	₹1,00,000 per incident and subject to review for termination
Failure to meet cleanliness standards	₹2,000 per day, doubling with repeat violations
Failure to maintain waste treatment	₹25,000/month until rectified
Revenue share delay > 10 days	Interest @ 12% p.a. plus ₹10,000 one-time penalty
Equipment uptime below 95%	₹10,000 per percentage point drop
Failure to provide updated maintenance logs	₹5,000 per instance

#### **4. Evaluation and Enforcement**

- (a) The Independent Expert shall assess compliance through quarterly joint inspections.
- (b) The Contracting Authority may conduct surprise inspections.
- (c) Repeated breach (more than 3 instances in any quarter) in the same category may lead to warnings, escalated penalties, and possible contract termination as per Article 15.
- (d) All damages may be recovered from the Performance Guarantee if not settled within 30 days of notice.

#### **5. Review and Updates**

This annexure shall be reviewed annually and may be revised based on mutual consent, emerging regulations, or operational realities, in consultation with the Independent Expert.

## **ANNEXURE V: TERMS OF REFERENCE FOR INDEPENDENT EXPERT**

### **1. Role and functions of the Independent Expert**

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

- (i) Determining the actual performance of the operator on key performance standards, as per the Agreement;
- (ii) assisting the parties in resolution of disputes as regards to the performance indicators;
- (iii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (iv) undertaking all other duties and functions as envisaged under the Agreement

## **ANNEXURE VI: ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (“**Agreement**”) is entered into at Guwahati, Assam, India on this the [●] day of [●], 2025

BY AND AMONGST:

[●], a company incorporated under the provisions of the [Companies Act, 1956/2013], having corporate identity number [●] and its registered office at [●] (hereinafter referred to as the “**Operator**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

AND

[●], having its registered office at [●] and amongst other places a branch office at [●] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

**Assam Inland Waterways Company Limited (AIWCL)**, a company incorporated under the Companies Act, 2013, having its registered office at the 2nd Floor, Directorate of Inland Water Transport Assam, Ulubari, Guwahati-781007, represented by its Managing Director (hereinafter referred to as the “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

As the context may require, the Operator, the Escrow Bank and the Authority will hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. The Authority has entered into a Contract dated [●] with the Operator (“**Contract**”) for the performance of the Services (*as defined in the Contract*) at the Terminal, in accordance with the terms and conditions as set forth in the Contract.
- B. The Contract requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.
- C. Accordingly, the Parties are entering into this Escrow Agreement setting forth the



terms and conditions for the opening of the Escrow Account (*as defined below*) with the Escrow Bank and operation of the same.

**NOW THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree 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.

**“Contract”** means the Contract referred to in Recital A above, and shall include any amendments made thereto in accordance with the provisions therein.

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority to the Operator asking the latter to cure the breach or default specified in such notice.

**“Escrow Account”** means an escrow account established in terms of and under this Agreement.

**“Payment Date”** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment.

### **1.2 Interpretation**

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

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Article 1 of the Contract shall apply *mutatis mutandis*, to this Agreement.

## **2) ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as Trustee**

2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the Authority and the Operator 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 Operator 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 Authority and the Operator, and applied in accordance with the terms of this Agreement. No Person other than the Authority and the Operator 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 Operator or the 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 Authority and the Operator 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 the Contract, and in any case prior to the Appointed Date, the Operator 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 Escrow Bank and the Operator shall 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 Operator.

## **2.5 Rights of the Parties**

Save and except as otherwise provided in the Contract, the rights of the Authority and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Operator shall have no other rights against or to the monies in the Escrow Account.

## **3) DEPOSITS INTO ESCROW ACCOUNT**

### **3.1 Deposits by the Operator**

3.1.1 The Operator agrees and undertakes that it shall deposit or cause to be deposited all inflows and receipts arising due to the performance of the Services or any right granted to it pursuant to this Contract, into the Escrow Account:

- a) all monies received in relation to the Terminal due to performance of the Services or otherwise including but not limited to Service Charges and Other Charges, amounts received from shareholders or any other Person or otherwise, *provided however that*, the Statutory Charges collected by the Operator or the proceeds of any refundable payment deposits, capital receipts and insurance claims shall not be required to be deposited in the Escrow Account and further, the Statutory Charges shall be directly deposited in the account instructed by the

Authority from time to time;

- b) all other revenues from or in respect of the performance of the O&M Services, including the proceeds of any rentals etc.; and
- c) all payments by the Authority, after deduction of any outstanding Revenue Share payment, if any.

3.1.2 The Operator may, at any time, make deposits of its other funds into the Escrow Account, *provided that* the provisions of this Agreement shall apply to such deposits.

### **3.2 Interest on Deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account, provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## **4) WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals**

4.1.1 At the beginning of every month, the Operator by written instructions, determine that the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order for making due payments, and if such payments are not due in any month, then retain such monies and pay out therefrom on the Payment Date(s):

- a) for all taxes, cess and fee payable to Government of India/ State Government/ Local Authority payable by the Operator for the Services;
- b) Statutory charges payable to Contracting Authority, if any;
- c) all expenses relating to operation and maintenance of Project Facilities and Services;
- d) towards payment of Revenue Share and other sums payable to the Contracting Authority and liquidated damages, if any;

- e) all development/equipment expenses relating to Project Facilities and Services;
- f) the Operator shall be at liberty to withdraw any sums outstanding in Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter. Provided, upon issuance of Termination Notice and/or suspension of the Operator in accordance with provisions of this Agreement, withdrawal from the Escrow Account shall be made only in accordance with written instructions of the Contracting Authority.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Operator shall provide to the Escrow Bank, with prior written approval of the Authority, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1, provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the Accounting Year makes such modification necessary.

#### **4.2 Withdrawals upon Termination**

Upon Termination of the Contract, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) outstanding Revenue Share payment;
- b) all payments and/ or Damages payable to the Authority;
- c) statutory payments, all taxes due and payable by the Operator for and in respect of the performance of the Services at the Terminal;
- d) incurred or accrued expenses for the performance of the Services;
- e) any other payments required to be made under the Contract; and
- f) balance, if any, in accordance with the instructions of the Operator.

#### **4.3 Application of Insufficient Funds**

Funds in the Escrow Account shall be applied in the serial order of priority, set forth in Clause 4.1 and Clause 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

## **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**

Atleast 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 Operator as to the relevant Payment Dates), the Escrow Bank shall notify the Authority 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 Operator upon a certificate signed by or on behalf of the Operator;
- (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 Authority of any notice or document received by it in its capacity, as the Escrow Bank from the Operator, or any other Person hereunder or in connection herewith; and
- (d) shall, within 5 (five) Business Days after receipt, deliver a copy to the Operator of any notice or document received by it from the Authority 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. 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 procure, and thereafter maintain and comply with, all regulatory approvals, if any 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 Operator ("**Escrow Default**"), unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- a) the Operator commits breach of this Agreement by failing to deposit any receipts into the Escrow Account, as provided herein, and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) Business Days;
- b) the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or
- c) the Operator commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) Business Days.

## **7) TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

Unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement, this Agreement shall remain in full force and effect until the Termination of the Contract. Upon the termination of the Contract, the Escrow Account can be operated by and only in accordance with the instructions of the Authority, as per the Applicable Laws.

### **7.2 Substitution of Escrow Bank**

7.2.1 The Operator may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, *provided that* the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account, to a new Escrow Account established with the successor Escrow Bank.

7.2.2 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 Operator made on or after the payment by the Operator of all outstanding amounts under the Contract including the payments specified in Clause 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 Operator.

## **8) INDEMNITY**

### **8.1 General Indemnity**

8.1.1 The Operator will indemnify, defend and hold the Authority and Escrow Bank, 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 Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.

8.1.2 The Authority will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense



arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Operator's obligations under the Contract or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

8.1.3 The Escrow Bank will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Operator's obligations under the Contract, 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.

## **8.2 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 indemnity under Clause 8.1 or in respect of which it is entitled to reimbursement (“**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (“**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.

## **9) GOVERNING LAW AND DISPUTE RESOLUTION**

### **9.1 Governing law and Jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Guwahati, Assam shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **9.2 Dispute Resolution**

9.2.1 If any dispute arises between the Parties, then, either Party may provide notice to the other Party of its intention to commence arbitration, as to the matter in dispute. Any dispute in respect of which a notice of intention to commence arbitration has been provided will be finally settled by arbitration.

9.2.2 Any dispute submitted by a Party to arbitration will be heard by sole arbitrator, to be constituted in accordance with the provisions of this Clause 9.2.

9.2.3 AIWCL shall propose three names and the Operator shall have the right to choose one name as the Arbitrator. If no agreement is arrived on the name of the Arbitrator, then the Arbitrator shall be appointed by the Court in terms of Arbitration and Conciliation Act.

9.2.4 If for any reason an arbitrator is unable to perform its function, the mandate of the arbitrator will terminate in accordance with the provisions of Applicable Law.

9.2.5 Arbitration proceedings under this Clause 9.2 will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder as may be amended, modified, or supplemented from time to time in English language. The seat of the arbitration proceedings shall be Guwahati, Assam.

9.2.6 Notwithstanding the reference of any dispute to be resolved through arbitration pursuant to this Clause 9.2, the Parties will continue to perform their respective obligations under this Contract, unless they otherwise agree.

## **10) MISCELLANEOUS PROVISIONS**

### **10.1 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 PM on a Business Day, or on a day that is not a Business Day, the notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication, by facsimile or e-mail, shall promptly deliver a

copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party, may by notice, change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

## **10.2 Amendment**

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.

## **10.3 Waiver**

10.3.1 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;
- b) Shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c) Shall not affect the validity or enforceability of this Agreement in any manner.

10.3.2 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 considered or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **10.4 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.

## **10.5 Survival**

10.5.1 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.
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.

#### **10.6 Severability**

If for any reason whatsoever, 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 9.2 of this Agreement or otherwise.

#### **10.7 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.

#### **10.8 Original Document**

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered, shall constitute an original of this Agreement.

**IN WITNESS WHEREOF** this Contract has been executed by the duly authorized representatives of the Parties as of the day and year 1st (first) above written on page 1 (one) of this Contract.

**Operator****Escrow Bank**

By: [ ]

By: [ ]

Name: [ ]

Name: [ ]

Title: [ ]

Title: [ ]

Authorised by [ ]

Authorised by [ ]

**Authority**

By: [●]

Name: [●]

Title: [●] Authorised by [●]

For and on behalf of the

## **ANNEXURE VII: EXPERT COMMITTEE**

Dispute resolution through the Expert Committee can be resorted to if either of the parties exercises its right for dispute resolution through the Expert Committee as provided for explicitly in this Agreement

- (i) In the event a party issues a notice (Expert Committee Notice) to refer the dispute to the Expert Committee, the parties may finalise a choice of an independent expert in the field of port and harbour engineering and/or financial and cost accounting as the case warrants within one week of such notice, failing which, each party shall appoint such an independent expert within two weeks of the Expert Committee Notice.
- (ii) Such independent experts shall have adequate experience in the design, construction, operation and maintenance of Terminal facilities and/or finances, accounting, costing and valuation practices as the case warrants.
- (iii) The two experts will jointly appoint a third expert with similar experience within one week of their appointment.
- (iv) The party issuing the Expert Committee Notice will provide the Experts with written submission of the nature of the dispute and the claim of the other party along with supporting documents within 1 (one) week of the constitution of the Expert Committee. Within one week of the furnishing of such submission, the other party may choose to provide written submissions defending its position.
- (v) The Expert Committee may call on either party to furnish additional information as deemed necessary to solve the dispute.
- (vi) The Expert Committee shall give the majority decision to both parties within three weeks of the receipt of written submission from the contracting parties.
- (vii) The decision of the Expert Committee shall be final and binding on the contracting parties unless either of the parties issues an Arbitration Notice.
- (viii) The costs of the engagement of the Expert Committees shall be shared equally by the parties.

## **ANNEXURE VIII: STANDARDS**

### **1. Operations and Maintenance Standards**

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

The Operator 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.

While carrying out the repairing, maintaining and replacing the project facilities, the Operator acknowledges and accepts that it is holding and maintaining the assets (as per Annexure II), project facilities in trust for eventual transfer to the Contracting Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Terminal Assets and Project Facilities and Services is diminished.

The Operator shall, at all times during the Contract 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 Operator 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 Contract Period, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Contract Period.

While carrying out the repair, maintenance and replacement of the project facilities, the Operator 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 Operator, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.

### **2. Safety Standards**

The Operator 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 assignment.

### **3. Safety Guidelines**

### **3.1 Safe movement**

In the operation of the facility, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency.

### **3.2 Restoration of services**

The facility shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

### **3.3 Contingency and safety management**

3.3.1 The Operator shall procure and ensure that appropriate contingency arrangements are in place at the Terminal to deal with the following events in accordance with applicable guidelines:

- a) bomb threat to the Terminal, or any acts of terrorism;
- b) vessel accidents at the Terminal;
- c) non-scheduled vessel forced to berth at the Terminal;
- d) fires at the Terminal;
- e) natural calamities and disasters;
- f) strikes at the Terminal;
- g) unlawful interference with waterway; and
- h) any other emergency at the Terminal.

3.3.2 A safety statement shall be prepared by the Operator once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets, and the compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances.

### **3.4 Safety equipment**

The following safety equipment shall be provided at the Terminal, if not already



installed:

- (a) Fire extinguishers and fire alarms at appropriate locations on the Terminal;
- (b) Life-saving appliances like life buoys etc.
- (c) Adequate number of stretchers and standard first aid boxes; and
- (d) Such other equipment as may be required in conformity with relevant guidelines and Good Industry Practice.

### **3.5 Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during such emergency through periodic simulated exercises, as laid down in a manual for management of disasters (“**Disaster Management Manual**”), to be prepared and published by the Operator prior to COD. The Operator shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than 30 (thirty) days prior to COD.

### **3.6 Fire safety**

- a) The Operator shall conform to the standards specified under safety standard in Annexure VIII.
- b) Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Terminal Building in case of emergency.
- c) Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signage shall be uniform and standardised.
- d) Appropriate categories of rescue and fire-fighting services shall be made available and maintained in accordance with safety standards in Annexure VIII.
- e) The operator shall prepare and submit to the Contracting Authority a terminal operation

manual covering all the aspects.

## **ANNEXURE IX: MONITORING ARRANGEMENT**

### **1. Introduction**

This Annexure outlines the monitoring framework for compliance by both the Operator and the Contracting Authority during the Operation Stage of the Gateway of Guwahati Terminal Project. It includes regular reporting, inspection schedules, compliance obligations, and performance reviews.

### **2. Monitoring of Operator's Obligations**

The Operator shall submit quarterly monitoring reports including compliance with the following obligations:

- i. Pre-COD / Annual Compliance
- ii. Prompt commencement of operations after “Ready for Operation” declaration.
- iii. Cooperation with safety experts during annual safety audit.
- iv. Purchase and maintenance of insurance as per Agreement and Good Industry Practice.
- v. Submission of insurance policy copies to Contracting Authority.
- vi. Monthly / Annual Compliance
- vii. Operation of Project Facilities as per “Project Requirement”.
- viii. Achievement of Performance Standards.
- ix. Compliance with O&M and Safety Standards.
- x. Rapid response to accidents and emergencies.
- xi. Timely repair and replacement of Project Facilities.
- xii. First Come First Serve operations unless otherwise approved.
- xiii. Accurate maintenance of revenue and operations records.
- xiv. Compliance with permits and applicable laws.
- xv. Prevention of unauthorized use or encroachment.
- xvi. Repairs and maintenance as per Agreement and Good Industry Practice.
- xvii. Approval for removal or replacement of assets.
- xviii. Monthly reporting and cooperation for inspection.
- xix. Installation and operation of computer systems as specified.
- xx. Security compliance including ISPS Code.
- xxi. Hiring of foreign personnel only with Government of India approval.

- xxii. Employment of qualified and skilled personnel.
- xxiii. Compliance with MGT (if applicable).
- xxiv. Recovery of tariff and deposit into Escrow Account.
- xxv. Collection and remittance of applicable cesses.
- xxvi. Timely payment of dues including Royalty to the Contracting Authority.
- xxvii. Proper operation of Escrow Account.
- xxviii. Claims handling for loss or damage of goods.
- xxix. Notification of change in Operator's management.
- xxx. Payment of taxes and levies to government bodies.
- xxxi. Use of insurance proceeds as per Agreement.
- xxxii. Appointment of Management Contractor (if applicable).
- xxxiii. Issuance of consultation notice and action for Operator defaults.

### **3. Monitoring of Contracting Authority's Obligations**

The Contracting Authority shall be accountable for the following, to be reviewed quarterly:

- i. Maintenance and granting required approvals.
- ii. Facilitation of infrastructure and utility access.
- iii. Monitoring performance standards and enforcing penalties as applicable.
- iv. Operation of Escrow Account per the Agreement.
- v. Verification of shareholding structure compliance.
- vi. Issuance of support letters for permits.
- vii. Avoiding competition from parallel facilities.
- viii. Notification and handling of Force Majeure events.
- ix. Compensation processing in termination events.
- x. Authorization for cess collection by the Operator.
- xi. Dispute resolution support.
- xii. Compliance monitoring and documentation of observations.
- xiii. Issuance of consultation notice in case of Operator default.

### **4. Performance Review**

The Operator's performance shall be reviewed quarterly by the Contracting Authority and Independent Expert based on compliance with operational, safety, financial, maintenance, and reporting obligations.

### **5. Reporting Template Summary**

The Operator shall submit a comprehensive quarterly report including:

- i. Status of compliance with Operator obligations.
- ii. Summary of maintenance and safety activities.
- iii. Financial compliance and Escrow Account operations.
- iv. Observations on operational issues and remedial actions taken.

The Contracting Authority shall review and respond to the report with observations or directions as needed.

## **ANNEXURE X: PROFORMA OF BANK GUARANTEE (PERFORMANCE SECURITY)**

**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 “**Guarantor**” which expression shall unless it be repugnant to the subject or context  
thereof include its successors and assigns;

In favour of:

**ASSAM INLAND WATERWAYS COMPANY LIMITED**, a public limited company  
incorporated under the Companies Act, 2013, having its registered office at Guwahati, represented  
by its [Managing Director] (hereinafter referred to as the “**the Contracting Authority**”, which  
expression shall, unless repugnant to the context or meaning thereof, include, its successors and  
assigns.

WHEREAS:

- a) The Contracting Authority, vide its Request for Proposal dated [●] (“the RFP”) invited interested bidders to implement a project envisaging (more particularly described in Annexure I and hereinafter referred to as “Project”);
- b) After evaluation of the bids received in response to the RFP, the Contracting Authority accepted the bid of the consortium comprising of and (“the Consortium”) OR the Contracting Authority accepted the bid of (“Applicant”) and issued the Letter of Intent No (“LOI”) dated\_\_\_\_\_ to the Consortium/Applicant requiring, inter alia, the execution of the Contract Agreement, (“the Contract Agreement”) the draft whereof was provided in the RFP;
- c) Pursuant to the LOI the Applicant/Consortium has promoted and incorporated a special purpose company (“the Operator”), to enter into the Contract 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 Contract Agreement, the Operator is required to furnish to the Contracting Authority, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. [●] (Rupees [●] only) as security for due and punctual performance/discharge of its obligations under the Contract Agreement,

- e) At the request of the Operator, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Operator of its obligations under the Contract Agreement.

**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 Contract Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s. ("the Operator") of all its obligations under the Contract Agreement.
3. The Guarantor shall, without demur or protest, pay to the Contracting Authority sums not exceeding in aggregate Rs. [●] (Rupees [●] only) within five (5) calendar days of receipt of a written demand therefor from the Contracting Authority stating that the Operator has failed to meet its performance obligations under the Contract Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Operator or validity of demand so made by the Contracting Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator 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 Contracting Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Contracting Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Contracting 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 Contracting Authority 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 Contract Agreement or other documents or by the extension of time for performance granted by the Contracting Authority or postponement/non- exercise/ delayed exercise of

any of its rights by the Contracting Authority or any indulgence shown by the Contracting Authority to the Operator 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 Contracting Authority of any of the Contracting Authority's rights or any indulgence shown by the Contracting Authority; 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 Contracting Authority in accordance with the provisions of the Contract Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs. [●] (Rupees [●] only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Operator/ the Guarantor or any absorption, merger or amalgamation of the Operator/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 Operator under the Contract Agreement;
  - (b) shall not be affected by any failure by the Contracting 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



Operator under the Contract Agreement;

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

(f) shall not be affected by any act, omission, matter or thing which, but for this article would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.
10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under.
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of \_\_\_\_\_ for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Contracting Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

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

SIGNED AND DELIVERED by

\_\_\_\_\_ Bank by the hand of Mr. \_\_\_\_\_ its

\_\_\_\_\_ and authorized official.

## **ANNEXURE XI: LIST OF APPLICABLE PERMITS AND CLEARANCES**

This annexure outlines the statutory permits, approvals, and clearances the Operator shall obtain, maintain, and renew during the entire term of the Concession Agreement for the operation and maintenance of the Gateway of Guwahati Terminal, in accordance with Applicable Laws, Good Industry Practice, and the terms of this Agreement.

### **1. Environmental and Pollution Control**

<b>No.</b>	<b>Permit / Approval</b>	<b>Issuing Authority</b>	<b>Applicable Law</b>
1	Consent to Establish (CTE)	State Pollution Control Board	Water (Prevention & Control of Pollution) Act, 1974; Air (Prevention & Control of Pollution) Act, 1981
2	Consent to Operate (CTO)	State Pollution Control Board	Same as above
3	Authorization for Waste Management (Hazardous, Bio-medical, E-waste, etc.)	State Pollution Control Board	Environment (Protection) Act, 1986 and associated Rules
4	Environmental Clearance (if required)	MoEFCC / SEIAA	EIA Notification, 2006 (as amended)
5	Shoreline Development Clearance (if applicable)	Ministry of Environment, Forest and Climate Change	CRZ Notification, 2011 / 2019

### **2. Labour and Employment Related**

<b>No.</b>	<b>Permit / Registration</b>	<b>Issuing Authority</b>	<b>Applicable Law</b>
6	Labour License (for engaging contract workers)	Labour Department	Contract Labour (Regulation & Abolition) Act, 1970
7	Registration under Shops and Establishments Act	State Labour Department	State-specific Shops and Establishments Act
8	Registration for Provident Fund (PF)	EPFO	Employees' Provident Fund and Miscellaneous Provisions Act, 1952
9	Registration for Employee	ESIC	Employees' State Insurance Act, 1948

No.	Permit / Registration	Issuing Authority	Applicable Law
	State Insurance (ESI)		
10	Professional Tax Registration	State Commercial Tax Department	Professional Tax Act (State-specific)

### 3. Maritime and Terminal Operations

No.	Permit / Approval	Issuing Authority	Applicable Law
11	Port Clearance for Terminal Operations	Inland Waterways Authority of India / DIWTA	Inland Vessels Act, 2021
12	Safety and Security Certification (ISPS Compliance)	Indian Maritime Administration / DG Shipping	ISPS Code / Merchant Shipping Act, 1958
13	Certificate of Registration for Floating Equipment	IWAI / DIWTA	Inland Vessels Act, 2021
14	Fire NOC	State Fire Department	Fire Safety Rules under State Laws
15	Explosive / Hazardous Cargo Handling Permit (if applicable)	PESO	Explosives Act, 1884 and Rules thereunder

### 4. Finance and Taxation

No.	Registration / Approval	Issuing Authority	Applicable Law
16	PAN / TAN	Income Tax Department	Income Tax Act, 1961
17	GST Registration	GST Department	Goods and Services Tax Act, 2017
18	Importer Exporter Code (if engaged in cargo)	DGFT	Foreign Trade Policy

### 5. Miscellaneous

No.	License / Approval	Issuing Authority	Applicable Law
19	Trade License	Local Municipal	Municipal Laws

No.	License / Approval	Issuing Authority	Applicable Law
		Authority	
20	Wireless/Radio Frequency License (if applicable)	WPC / DoT	Indian Telegraph Act, 1885
21	CCTV and Surveillance System Registration (if integrated with police servers)	Local Police Department	IT Act / State Cybersecurity Policy
22	Building Plan and Occupancy Certificate (if any new facility developed)	Local Development Authority / Urban Body	Local Building Bye-laws

**Note:**

- The above list is indicative. The Operator shall conduct a due diligence review periodically and obtain any additional permits as may be required due to changes in law, regulations, or operations.
- All permits shall be valid, updated, and displayed at the site as required. Copies shall be submitted to the Contracting Authority upon request.

The above list is not exhaustive and may be modified as per requirement to commence the operation, as per prevailing Rules and Regulations.

The operator to obtain the required NOCs. IWAI will assist to obtain NOC by the operator, to the extent possible. However, after appointed date, the renewal, fee etc shall be the responsibility of the operator and IWAI will provide required assistance, if any in the role of custodian.

## **ANNEXURE XII: RATE NOTIFICATION**

1. Operator is free to fix the tariff as per market rates except statutory levy and fee notified by Contracting Authority or Statutory Authority or Regulatory Authority or Government of Assam or Government of India.
2. Any change in tariff by the operator, subsequently it is to be notified by the relevant authority before implementation and is to be displayed at websites of Operator and Contracting Authority.
3. The Rate Notification for the ferry services that are plying in all waterways in Assam can be seen and downloaded from <https://iwtdirectorate.assam.gov.in/documents-detail/revised-tariff-of-iwt-ferry-service-wef-1-02-2023>

**ANNEXURE XIII: INDICATIVE NEGATIVE LIST FOR NON-OPERATIONAL  
ACTIVITIES**

This annexure provides an indicative, non-exhaustive list of activities that shall be prohibited within the Terminal premises, in line with the extant laws of the land and subject to the scope of work detailed in Annexure III of this Agreement. For any construction or development within the Terminal, final approval must be obtained from the Contracting Authority by the Operator.

**Prohibited Activities**

The following activities shall not be permitted within the Terminal:

1. **Manufacture, handling, storage, or disposal of hazardous substances**, as defined under applicable laws including but not limited to notifications issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India.
2. **Setting up or expansion of units for disposal of waste and effluents**, except:
  - Facilities required for discharge of treated effluents with necessary consents under the *Water (Prevention and Control of Pollution) Act, 1974* and other applicable laws.
  - Development of storm water drains, as per approved design.
3. **Dumping of municipal solid waste** or other waste materials for landfill or any other purposes.
4. **Establishment or operation of** night clubs, casinos, or bars, or any similar recreational activity deemed inappropriate within the functional and operational objectives of the Terminal.
5. **Any commercial activity that disrupts existing local social or cultural practices**, unless the activity falls under essential infrastructure development as mandated in the scope of work (Annexure III).
6. Operation of **gambling or betting facilities**, including entities facilitating such activities either directly or indirectly.
7. **Hosting of musical concerts, entertainment events, or similar large-scale gatherings**, unless specifically permitted and aligned with the operational purpose of the Terminal.
8. **Establishment of educational institutions or universities**, unless expressly provided for under the approved scope of work.

9. **Development of healthcare facilities** for commercial or retail medical services, unless part of approved infrastructure for health and safety under Terminal operations.
10. **Construction of religious structures or monuments**, either permanent or temporary, within the Terminal premises.
11. **Allocation of land for rehabilitation purposes**, which is not aligned with the operational scope and without prior consent from the Contracting Authority.
12. **Allocation or use of land for residential housing or dwellings**, unless explicitly allowed under the Agreement and approved master plan.

### **Final Provisions**

- This list **is** illustrative in nature and may be amended from time to time by the Contracting Authority.
- The Operator shall be responsible **for** seeking prior approvals for any activity or development not expressly mentioned in the scope of work or in this negative list.
- All activities undertaken within the Terminal must comply with relevant national and state laws, including environmental, safety, and land use regulations.



## **ANNEXURE XIV: APPOINTMENT OF AUDITORS**

### **Appointment of Auditors**

- a) The Operator 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 herein. All fees and expenses of the Statutory Auditors shall be borne by the Operator.
- b) The Operator may terminate the appointment of its Statutory Auditors in accordance with the provisions of the Companies Act, 2013, 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 Authority has the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (“**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) Further, the Operator shall change the Statutory Auditor from time to time to comply with the provisions of the Companies Act, 2013 and any rules and regulations framed thereunder.
- e) Panel of Chartered Accountants: Pursuant to the provisions of the Agreement, the Authority and the Operator shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (“**Panel of Chartered Accountants**”).
- f) Invitation for Empanelment: The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:
  - i. the firm should have conducted statutory audit of the annual accounts of at least 10 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;
  - ii. the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
  - iii. 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 Authority; and
  - iv. the firm should have an office in the State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.
- g) Interested firms meeting the eligibility criteria shall be required to submit a statement of

their capability, including the biodata of all the practicing 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 Crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

- h) Evaluation and Selection: The Contracting Authority shall prepare a list of all the eligible firms and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.
- i) Consultation with the Operator: The Contracting Authority shall convey the aforesaid panel of firms to the Operator for scrutiny and comments, if any. The Operator shall be entitled to scrutinise the relevant records of the Contracting 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 Contracting Authority within 15 (fifteen) days of receiving the aforesaid panel.
- j) Mutually Agreed Panel: The Contracting Authority shall, after considering all relevant factors including the comments, if any, of the Operator, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- k) After completion of every 2 (two) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Contracting Authority and the Operator, a new panel shall be prepared.

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