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**MODEL CONCESSION AGREEMENT**

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This Concession Agreement is made on this \_\_\_\_ day of \_\_\_\_, 199\_ by and between:

**The Gujarat Maritime Board** constituted under the Gujarat Maritime Board Act, 1981 and having its office at \_\_\_\_\_ (hereinafter referred to as the “Licensor”, which expression shall, unless repugnant to the context or meaning hereof, include its successors and assigns), as party of the First Part; and

**M/s.** \_\_\_\_\_ a company incorporated under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the “Licensee”, which expression shall, unless the repugnant to the context or meaning hereof, include its successors and permitted assigns) as party of the Second Part.

**WHEREAS:**

- (a) The Licensor is constituted by the Government of Gujarat under the provisions of the Gujarat Maritime Board Act, 1981 and has been vested with the power to develop, manage, administer and control intermediate and minor ports in the State of Gujarat
- (b) The Department of Ports & Fisheries, Government of Gujarat, announced a Build, Own, Operate, Transfer (“BOOT”) policy for private sector participation in the development of the State’s ports vide its Government Resolution dated 29th July 1997. Pursuant to the BOOT policy, the Licensor seeks to develop port facilities in Gujarat by entering into arrangements with the private sector for the design, financing, building and operation of ports in Gujarat and is keen to develop the Port of \_\_\_\_\_, with private sector participation on a BOOT basis.
- (c) The licensor has [ invited bids in \_\_\_\_ (month), 19\_\_, for the project, in the name of \_\_\_\_\_ Port Project, and through a process of competitive bidding selected [ in \_\_\_\_ (month), 19\_\_,]<sup>1</sup> the consortium of \_\_\_\_\_ as “Key Promoters” led by \_\_\_\_\_, a company whose registered office is at \_\_\_\_\_ ( the “Lead Promoter”) as identified in the Joint Development Agreement for developing the port of \_\_\_\_\_ ( the “Port”).
- (d) The licensor awarded a letter of Intent (“LOI”) dated\_\_\_\_\_, 1999\_ to the Lead Promoter/Key Promoters to develop, operate and maintain the Port on BOOT basis, and has agreed to grant a license to the Licensee under the Gujarat Maritime Board Act and for the development, construction, financing, operation and maintenance of the Port (“concession Agreement”). The Licensor has also agreed to lease the Leased Premises for the purpose of development of the under the Concession Agreement by way of a separate lease agreement (“Lease and Possession Agreement”), copy of which is annexed hereto as Annexure 15.

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<sup>1</sup> Not applicable for joint sector ports

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- (e) The licensor has been reimbursed by the Licensee for the cost associated with site specific technical studies which were undertaken by the Licensor. Such costs were determined [ *at the time of the approval of the Detailed Project Report for Joint Sector Ports* ] [ *at the time of International Competitive Bidding for the private ports*].
- (f) The Key Promoters have executed a Joint Development Agreement dated \_\_\_\_\_, 199\_ allocating project responsibilities among the Key Promoters, pursuant to which the Key Promoters promoted the Licensee to develop, finance, contract, own, maintain, and operate the Port and transfer the Leased Premises and the assets thereon to the Licensor on termination of the Concession Agreement.
- (g) The Detailed Project Report (“DPR”) has been prepared and submitted, by the Key Promoters/Licensee, in accordance with the terms of the LOI, to the Licensor on \_\_\_\_\_ 199\_. The DPR was modified, as required by the Licensor, and has been approved by the Licensor. The DPR with such modifications shall be referred to as the Approved DPR (annexed hereto as Annexure ) and shall be treated as a part of this Agreement.
- (h) The Port Limits, the area of land required for the development of the Port and the minimum area of land required to be leased to the Licensee for the commencement of construction have been identified in the Approved DPR. The Licensee has agreed to construct the Contracted Assets on the Leased Premises in accordance with Annexure \_\_\_\_ of the Approved DPR.
- (i) The Land Use Plan and the 20 years Development plan submitted, by the Licensee have been approved by the Licensor and the modifications stipulated (if any) have been incorporated in the Approved Land Use Plan and the Approved Development Plan annexed hereto as Annexure 14 and 16 respectively.
- (j) On the signing of the LOI, the Licensee provided a Development Guarantee in favour of the Licensor for Rs. 1 crore, which unless otherwise agreed to shall remain in force and effect until the Zero Date.
- (k) The parties hereto have agreed to render all necessary cooperation and assistance and take appropriate action for giving effect to the terms of this Concession Agreement.
- (l) The Licensor has agreed to grant to the Licensee rights under this Agreement to implement the Project in accordance with the terms and on the conditions provided herein.

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**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

## **2. DEFINITIONS AND INTERPRETATION**

### **2.1 Definitions**

In this Agreement, unless the context otherwise requires:

1. **“Approved Detailed Project Reports” / “Approved DPRs”** means the Detailed Project Report approved by the Licensor for the development of the various phases of the Port, the approved form of which shall be signed for identification by the parties and shall include any amendments to the DPRs approved by the Licensor in accordance with this Agreement.
2. **“Approved Capital Cost”** means the quantum of the capital cost approved by the Licensor in accordance with Clause 11.3.1.2.3.
3. **“BOOT Policy”** means policy declared for the development and operation of new private and joint sector ports in Gujarat vide Government Resolution dated 29<sup>th</sup> July 1997 and as amended from time to time attached hereto as Annexure 18.
4. **“Change in Law”** shall have meaning specified in Clause 12.1
5. **“Concession”** means the rights granted by the Licensor to the Licensee in accordance with Clause 3.1.
6. **“Concession Agreement”/ “Agreement”** means this concession agreement.
7. **“Concession Waterfront Royalty”** shall have meaning specified in Clause 11.3.1.2.2(b).
8. **“Conservator”** means the conservator appointed in respect of the Port from time to time under the Indian Ports Act 1908.
9. **“Contracted Assets”** means the assets listed in Annexure \_\_\_\_ of the Approved DPR as have been agreed upon by the Licensor and the Licensee for development during the concession period and such other assets as will be subsequently approved and included by the Licensor as a part of Approved DPR by the Licensor as Contracted Assets in accordance with this Agreement.
10. **“Core Assets”** means the assets strategic to the development and operation of the Port, the change in ownership of which would be subject to the approval of the Licensor and which have been identified in Annexure to the Approved DPR
11. **“Date of Commencement of Operations”** shall have the meaning specified in Clause 8.9
12. **“Depreciated Replacement Value”** shall have the meaning assigned to it in accordance with the “Statements of Asset Valuation Practice and Guidance Notes” of the Royal Institution of Chartered Surveyors, United Kingdom, publication dated January 1995 as amended from time to time.

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13. **“Development Phase”** means the phase between the Effective Date and Zero date of this Agreement.
  14. **“Drop Dead Date”** means the date on which the events set out in Section 3.4 occur.
  15. **“Effective Date”** means the date of signing of this Agreement.
  16. **“Essential Movable Contracted Assets”** means such movable assets identified and agreed to as identified as such in the Approved DPR.
  17. **“Expert Committee”** means the committee set up in accordance with Annexure hereto.
  18. **“Financial Closing”** means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Documents and receipt of commitments for the equity required for Phase I of the Project/immediate access to funds.
  19. **“Financing Documents”** means all the loan agreements, notes, indentures, security agreements, letters of credit, share subscription agreements, subordinated debt agreements and other documents relating to the financing of the Project as the same may be amended, supplemented or modified from time to time.
  20. **“Force Majeure”** shall have the meaning specified in Clause 13.1
  21. **“Good Industry Practice”** means, in respect of the Licensee, its contractors, sub-contractors, sub-concessionaires, sub-lessees and all other such third party agents of the Licensee, practices, methods, techniques and standards, as changed from time to time, that are generally accepted for use in international port construction, development, operations and maintenance taking into account conditions in India.
  22. **“Government of Gujarat”** shall include its respective department or any other authority, agency or instrumentality functioning under the direction or control of the Government of Gujarat having jurisdiction over the licensee.
  23. **“Gujarat Maritime Board Act”** means the Gujarat Maritime Board Act, 1981 as amended or re-enacted from time to time.
  24. **“Immovable Contracted Assets”** means Contracted Assets as listed in Annexure \_\_\_\_.
  25. **“Indian Ports Act”** means the Indian Ports Act, 1908 as amended or re-enacted from time to time.
  26. **"Joint Development Agreement"** means the agreement dated \_\_\_\_, 199\_ between the Key Promoters and inter alia allocating project responsibilities between the Key Promoters as per Annexure 19.
  27. **“Key Promoters”** means the consortium selected [through a process of competitive bidding] in \_\_\_\_\_ (month), 19\_\_, led by the Lead Promotor.
  28. **“Landing & Shipping Place”** has the meaning given in Section 27 of the Gujarat Maritime Board Act.

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29. **“Landing & Shipping Place Declaration”** means a declaration by the Collector of Customs declaring the Port as a Landing and Shipping Place.
  30. **“Lead Promoter”** shall mean M/s. \_\_\_\_\_ having a major Equity Share as per the Joint Development Agreement.
  31. **“Lenders”** means any Indian/Foreign finance institution/s, corporations, company/ies, or banks providing secured and unsecured credit facilities to licensee, including lease and hire-purchase facilities to the Licensee pursuant to the Financing Documents.
  32. **“Letter of Intent (LOI)”** means the letter of intent dated \_\_\_\_\_, 199\_ awarded to the Lead Promoter and/or the Key Promoter by the Licensor to develop, operate and maintain the Port on BOOT basis.
  33. **“Leased Premises”** means the leased land, reclaimed land and includes the waterfront leased to the Licensee by the Licensor under the terms of the Lease and Possession Agreement attached as Annexure 15 hereto and any land to be leased in the future or reclaimed by the Licensee.
  34. **“Lease and Possession Agreement”** means the agreement to be entered into between the Licensor and the Licensee attached as Annexure 15 hereto, providing for the lease to the Licensee of the Leased Premises described in Schedule annexed in Lease and Possession Agreement hereto and as amended from time to time to reflect additions/modifications for the term of the Concession.
  35. **“Major Expansion”** Shall have the meaning specified in Clause No. 11.7( b)
  36. **“Notified Area”** means the area designated as such by the appropriate authority within the Port Limits.
  37. **“Notified Area Authority”** means the authority notified as such by the Government of Gujarat.
  38. **“Notified Tariff”** shall have the meaning specified in Clause 11.2.2 (b).
  39. **“Operating Procedures”** shall have the meaning specified in Clause 10.3(a).
  40. **“Phase I”** shall have the meaning assigned to it in Approved DPR.
  41. **“The Port”** means the port proposed to be developed in accordance with the terms of this Concession Agreement by the Licensee.
  42. **“Port Limits”** means the limits of the Port as defined under Section 5 of the Indian Ports Act and as amended from time to time.
  43. **“Project”** means and includes the development, financing design, construction, operation and maintenance of the Contracted Assets and the Port in accordance with the provisions of this Concession Agreement, including provision of services to the users.
  44. **“Normal Transfer”** shall be governed by the provision of Clause 16.
  45. **“Regulatory Authority”** means any authority (referred to in Clause 5) constituted by law in the State of Gujarat for the port sector.

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46. **“Royalty Concession Period”** shall have the meaning specified in Clause 11.3.1.2.2.
  47. **“Scheduled Construction Period”** shall have the meaning specified in Clause 8.1
  48. **“Scheduled Date of Normal Transfer”** shall have the meaning specified in Clause 16.1.
  49. **“Term”** shall have the meaning specified in Clause 16.1.
  50. **“Termination”** shall be governed by the provisions of Clause 14.
  51. **“Termination Notice”** shall have the meaning specified in Clause 14.3.5.
  52. **“Transport Infrastructure Linkages”** means the road infrastructure linkages agreed to in the Approved DPR – Phase I, identified as material transport infrastructure required for the development/operations of the Port.
  53. **“Waterfront Royalty”** means the amount payable by the Licensee to the Licensor, per ton of cargo handled at the Port, based on the actual cargo throughputs achieved and to be paid in accordance with Clause 11.3.1, for the various options given therein.
  54. **“Zero Date”** shall have the meaning specified in Clause 3.3

## **2.2 Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice-versa;
- (b) words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- (c) heading and bold type face are only for convenience and shall be ignored for the purpose of interpretation;
- (d) references to all agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, novated or assigned from time to time;
- (e) reference to any legislation or law or to any provision thereof shall include references to such law as it may after the date of this Agreement from time to time be amended, supplemented or reenacted;
- (f) references to the word “include” or including” shall be construed without limitation;
- (g) the Annexures to this Agreement form a part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement; and

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- (h) a reference to “party” is to a party to this Agreement and a reference to “parties” is, unless otherwise stated to the contrary, a reference to the parties to this Agreement.

### **3. Licensing Framework**

#### **3.1 Grant of Concession**

**3.1.1** The Licensor hereby grants to the Licensee the right and authority during the Term of this Agreement to develop, finance, design, construct, operate and maintain the Contracted Assets and the Port and provide services to the users and the Licensee accepts the Concession granted to it by the Licensor and agrees to implement the Project in accordance with the terms and conditions of this Agreement and the Approved DPR.

#### **3.2 Condition Precedent**

- (a) Except for the provisions of Clause 3.2(b), 4,5,6,12,13,14,17,18,,19,20 and 21 and the related Annexures, if any, this Agreement shall be effective upon the satisfaction of the following conditions:
- i) Declaration by the Government of Gujarat of the Port as a port under the provisions of the Indian Ports Act;
  - ii) Extension by the Government of Gujarat of the Gujarat Maritime Board Act to the Port by a notification;
  - iii) Authorisation by the Licensor, by a notification under the provisions of Clause 35(1) of the Gujarat Maritime Board Act, to the Licensee to construct and maintain port facilities at the Port in accordance with the provisions of Annexure \_\_\_\_.
  - iv) Authorisation by the Licensor, by a notification under the provisions of Clause 32(3) of the Gujarat Maritime Board Act, to the Licensee to offer the list of services provide in Annexure \_\_\_\_ at the Port;

Provided that the Licensee shall perform the obligations set out in Section 6.2.1. as of the Effective Date.

- (b) The Licensor and Licensee shall use reasonable endeavours to satisfy the Conditions Precedent.

#### **3.3 Zero Date**

- (a) The “Zero Date” shall mean the date on which all the conditions precedent set out in Clause 3.2 have been satisfied and the following conditions have been fulfilled :
- i) The environment clearance from the Ministry of Surface Transport/Ministry of Environment has been received ;
  - ii) The following milestones necessary for the commencement of construction in the Approved DPR, are complete;  
*[milestones to be identified];*and
  - iii) Financial Closing has been achieved.



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### **3.4 Drop Dead Date**

- (a) In the event Zero Date is not achieved within 18 months from the Effective Date, this Agreement shall stand terminated and the parties to the Agreement shall have no liability of any nature whatsoever, subject to clause (b) below.
- (b) If Zero Date has not been achieved on account of failure to achieve Financial Closing, the Development Guarantee may be invoked by the Licensor,
- (c) In the event that the Licensor has not fulfilled the covenant set forth in Clause 3.5.1.
  - (a) within a period of six months after the completion of inspection of facilities as per clause 8.8, the Licensee shall be entitled to terminate this Agreement in accordance with Clause 14 and the Development Guarantee shall stand discharged and shall be returned to the Licensee.
- (d) In the event that the Licensor has not fulfill the covenant set forth in Clause 3.5.1(b) within the time period prescribed therein, the Licensee shall be entitled to forth with terminate this Agreement and the Development Guarantee Shall stand discharged and shall be return to the Licensee.
- (e) In the event that the Licensor has not fulfill the covenant set forth in Clause 3.5.1(c) within a period of \_\_\_\_ months after the effective date, the Licensee shall be entitled to terminate this Agreement in accordance with Clause 14 and
- (f) In the event that the Licensee has not fulfill the covenants set forth in Clause 3.5.2 (a) and/or Clause 3.5.2.(b), the Licensor shall be entitled to forth with terminate this Agreement and the Development Guarantee shall liable to be invoke by the Licensor.
- (g) In the event that the Licensee dose not complete Phase I construction [ or cause construction to be completed] within a period of six (6) months after the end of Schedule Construction Period, the Licensor shall be entitled to terminate this Agreement in accordance with Clause 14.

### **3.2 Covenants**

#### **3.2.1 Covenants of the Licensor**

- (a) The Licensor shall take all steps within its powers and in accordance with this Agreement:
  - (i) to apply to the Customs Department for declaration of the Port as a Landing and Shipping Place, subject to Clause 8.6 of this Agreement and
  - (ii) obtain such declaration from the Customs Department.
- (b) The Licensor/GOG shall acquire the land for subsequent phases of the project, as identified in the Approved DPR for that phase within 18 months of the Effective Date, and shall transfer leasehold interest and vacant possession of such land at the time and in the manner required by the Approved DPR.
- (c) The Licensor shall take all steps within its power to cause the Government of Gujarat to appoint the Licensee or its designee as the Conservator for the Port under the Indian Port Act.

#### **3.3.2 Covenants of the Licensee**

- (a) The Licensee shall conduct the design and detailed engineering studies in accordance with Clause 6.2.1 and obtain all the clearances as may be required for the performance of its rights and obligations under this Agreement.

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- (b) The Licensee shall submit the application for all the environment clearances for the purpose of the Project within 6 months of the Effective Date.
  - (c) The Licensee shall in respect of Phase II and the subsequent phases of development of the Port:
    - i) construct or cause to be constructed the Contracted Assets in accordance with this Agreement and the Approved DPRs;
    - ii) execute a Construction Guarantee in favour of the Licensor in accordance with Clause 8.3 of this Agreement; and
    - iii) complete construction within the time period specified in Clause 8.1

#### **4. Statutory obligations of the Licensee**

The Licensee shall perform its obligations including conservancy obligations under this Agreement in compliance with all applicable laws and Good Industry Practice.

#### **5. Regulatory Framework – Provisions for Regulation**

The Licensor and Licensee acknowledge that

- (i) the Government of Gujarat may establish a regulatory framework in the future, and constitute a Regulatory Authority for the port sector in Gujarat in accordance with BOOT Principles; and
- (ii) they shall be subject to the control of such Regulatory Authority.

#### **6. Subsequent Phases**

##### **6.1 Technical Studies**

- (a) The Licensee shall undertake to do technical site studies [engineering pre-feasibility studies / DPR] at the Port for development of subsequent phases.
- (b) The Licensor shall make available the records and data used for such studies. The Licensor shall not be liable for the quality or adequacy of information provided in such studies.
- (c) The Licensee shall get approved Detailed Project Reports for all subsequent phases of development from the licensor.

##### **6.2 Design and Detailed Engineering Drawing**

###### **6.2.1 Milestone: Appointment of design engineers**

- (a) In the event that the engineering design of facilities is proposed to be carried out by third parties, the Licensee shall appoint a professionally qualified design engineer, ~~xe~~ "Independent Consulting Engineer" having the necessary experience of having undertaken assignment of a similar nature at other ports, for the preparation of the detailed design and engineering drawings, within a period of 3 months from the start of the respective phases. The Licensee shall submit the terms of reference and the qualifications of the design engineer to the Licensor within one week of the appointment of the design engineer.
- (b) If such detailed design and engineering drawing is proposed to be undertaken by the Licensee himself, the Licensee shall submit to the Licensor within 3 months of

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the start of the respective phases, the composition, qualifications and experience of the design team, which is constituted to carry out the work prior to the commencement of the design activity.

- (c) The Licensee shall submit to the Licensor copies of all detailed design and engineering drawings for reference within two weeks of the finalisation of the same.

### **6.3 Clearances**

The Licensor/GOG shall make reasonable efforts to assist the Licensee in obtaining clearances at both the Central and State Government levels for the performance of its rights and obligations under this Agreement.

### **6.4 Obligations as per LOI/Joint Development Agreement**

The Licensee undertakes to perform the obligations of the Key Promoters under the LOI/Joint Development Agreement in accordance with its terms.

### **6.4 Land**

#### **6.4.1 Land location and area**

The Licensor will leased the land to be defined in the Lease Agreement and Lease Possession Agreements to be executed.

#### **6.4.2 Easementary Rights**

The Licensee shall acquire such easementary rights as are agreed to in the Approved DPR.

#### **6.4.3 Period of lease**

- (a) The term of the lease shall run concurrent with this Agreement and shall terminate on the expiry of the Term or termination of this Agreement, whichever is earlier. The Leased Land will revert to the Licensor upon expiry of the lease period.
- (b) This Agreement shall be terminated on termination (for any reason whatsoever) or expiry of the Lease & Possession Agreement notwithstanding anything contained in any earlier agreement.

#### **6.4.4 Reclaimed land**

- (a) Ownership of all land reclaimed by the Licensee on the waterfront within the Port Limits shall vest with the Licensor.
- (b) No lease rentals shall be payable for occupation and use of such land by the Licensee.
- (c) Such reclaimed land shall revert to the Licensor on termination of the Lease Agreement and in accordance with the provisions of this Agreement.

#### **6.4.5 Notified Area Status**

The Licensor shall use its reasonable efforts to procure the designations of the Leased Premises as a Notified Area by the appropriate authority under the relevant laws for the time being in force.

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#### **6.4.6 Sub-leasing of the Leased Premises**

- (a) The Licensee shall be entitled to sub-lease the Leased Premises in accordance with the terms of this Agreement under intimation to the licensor.
- (b) The Licensee shall not sub lease the lease premises prior to the commencement of construction.

#### **6.4.7 Area for expansion**

The Licensor shall acquire and keep in reserve additional land from the boundary of the Leased Premises as identified in the Approved DPR for future expansions of the Port.

#### **6.4.8 Land Lease Rentals**

Lease Rentals for the Leased Premises shall be as per the rates in the Lease and Possession Agreement and shall be escalated on the first of April, every three years by 20% of the previous revision.

#### **6.5 Progress Monitoring and Status Reports**

The parties shall furnish to each other periodic status reports relating to the key milestones and obligations at the time and in the manner required in Annexure1.

#### **6.6 Transport Infrastructure**

In the event that the Transport Infrastructure Linkages as identified and agreed upon in the Approved DPR of Phase I have not been obtained by the licensee by the Effective Date for reasons beyond its control and provided such lack of infrastructure materially affects the performance of the port, without prejudice to the provisions of Clause 8, the Scheduled Consideration Period shall stand extended by such time till the Transport Infrastructure Linkages are obtained by the Licensee. Provided always that the extension shall not exceed a maximum of 2 years.

### **7. Corporate Structure**

#### **7.1 Incorporation**

- (a) The Articles of Association (the "Articles") of the Licensee shall be amended within three months of the Effective Date to include:
  - i) terms and conditions regarding the composition of share-holding stipulated in this Agreement; and
  - ii) terms and conditions related to changes in the share-holding pattern stipulated in this Agreement;and the Licensee shall submit the amended Articles to the Licensor as soon as may be reasonably possible.
- (b) Any subsequent change in the Articles which alter the provisions required by this sub-clause shall require the prior approval of the Licensor.

#### **7.2 Composition of Shareholders**

- (a) During the development phase, the individual shareholding of Key Promoters shall not be less than proposed in the BID/LOI/JDA.

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- (b) The Lead Promoter shall maintain a minimum interest of 26 % in the Licensee till the completion of seven years from the Effective Date.
  - (b) The combined share-holding of Key Promoters in the Licensee shall not be less than 51% for a period of seven years from the Effective Date (“Lock in Period”). A reduction in stake below 51% of the equity in the Licensee by the Key Promoters during this Lock-in Period shall require prior written approval of the Licensor. Such a change in the share-holding pattern may be permitted by the Licensor where, in the opinion of the Licensor, the change is not prejudicial to the strengths of the consortium as evaluated by the Licensor on the Effective Date.
  - (c) During the term of this Agreement, an acquisition of more than 10% direct or indirect interest in the Licensee company by any person (either alone or together with its associates) shall require and shall be subject to the prior approval of the Licensor, which approval shall be withheld if, inter alia, such acquisition, is in the opinion of the Licensor, prejudicial to national interest.(d) Any change in shareholding (other than those which require the Licensor’s approval) shall be intimated to the Licensor by the Licensee.

### **7.3 Constitution of the Board**

The Licensee shall appoint one nominee of the Licensor as a member of its Board of Directors, without prejudice to any other rights the Licensor may otherwise have under any other agreement between the Licensor and the Licensee.

## **8. Construction Phase**

### **8.1 Length of Construction Period**

- (a) The Period for completion of construction of Phase 1 Contracted Assets (the “Scheduled Construction Period”) shall be deemed to commence on the Zero Date.
- (b) The Scheduled Construction Period for Phase I of the Project shall be the lesser of the three years and the period in the Approved DPR.
- (c) For All subsequent phases of development of the Port, the period of construction of the Contracted Assets shall be as per the Approved DPR.

### **8.2 Obligations to Construct**

The Licensee shall construct or cause to be constructed the Contracted Assets at the time and in the manner required by this Agreement.

### **8.3 Construction Guarantee**

The Licensee shall provide a Construction Guarantee (on or before the Zero Date and which guarantee shall be in force until the issue of Certificate of Completion of the Phase I Construction in accordance with Clause 8.10) in favour of the Licensor for an amount equivalent to 3 % of the value of the Contracted Assets for Phase I of the Project in accordance with the Approved DPR.

### **8.4 Construction Monitoring and Inspection**

- (a) From the Zero Date, the Licensor or its representatives shall be entitled to monitor and inspect any construction activities on the Leased Premises to ensure

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- conformance with the requirement of the Approved DPRs and to ensure compliance with the terms and conditions of this Agreement.
- (b) The Licensee shall furnish periodic status reports relating to the obligations in accordance with Annexure \_\_\_\_
  - (c) The Licensee shall ensure un-hindered access and offer necessary co-operation to the Licensor or its representatives for monitoring and inspection of construction activities.
  - (d) The aforesaid provisions shall not, however, relieve the Licensee from performing any of its obligations under this Agreement.

### **8.5 Water, Power and Utilities**

The Licensor/GOG shall co-ordinate on a reasonable effort basis between other State Government agencies as may be required for the provisions of utilities to the Licensee. The Licensor shall not however be liable in any manner whatsoever for the non-provision of utilities.

### **8.6 Sub-concession for the construction of assets**

- (a) The Licensee may fulfill its obligation to construct and operate the Contracted Assets by granting sub-concessions to third parties .
- (b) The Licensee shall obtain the prior written consent of the Licensor for granting sub-concessions in respect of Core Assets.
- (c) Unless otherwise agreed to by the Licensor, all sub-concessions granted by the Licensee to third parties and long term commercial agreements entered into by the Licensee with third parties shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate on Termination of this Agreement.
- (d) The Licensee shall:
  - (i) ensure that the assets created and/or constructed pursuant to the sub-concession vest in the Licensor at the expiry or termination of this Agreement;
  - (ii) be liable for payment of Waterfront Royalty for any cargo handled by the sub-concessionaire;
  - (iii) ensure that the sub-concessionaire performs its obligations in the same manner that the Licensee is required to perform its obligations under this Agreement; and
  - (iv) deliver copies of all contracts with sub-concessionaires to the Licensor.
- (e) Unless otherwise agreed to by the Licensor, the Licensor shall not be liable for any costs whatsoever in relation to such sub-concessions and long term commercial agreements entered into by the Licensee with third parties as a result of the expiry of this Agreement.
- (f) The Licensee shall construct and operate or cause to be constructed and operated assets in accordance with Good Industry Practice.

### **8.7 Changes in the subsequent DPRs**

- (a) All construction shall be strictly in accordance with the DPRs as approved by the Licensor. Prior written approval of the Licensor shall be required for any material changes or deviations from the Approved DPR during all stages of development and construction of the Project in the nature of :

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- i) changes in the available ship berthing space;
  - ii) changes in cargo composition and/or proportion from that specified in the Approved DPR;
  - iii) variance in draft proposed at the berth and/or at the channel;
  - iv) variance in overall capital cost by more than 10% from the original estimate and/or a variance in specific cost components (including, interest during construction) by more than 20% from the initial estimate (inclusive of the variations caused due to foreign exchange fluctuations);
  - v) changes in the Approved Land Use Plan;
  - vi) variance in proposed quality standards/specifications of assets; or
- (b) Consequent adjustment to the milestones if requested by the Licensee shall be subject to the prior approval of the Licensor. The Licensee shall implement the approved changes in conformity with this Agreement.
- (c) In the event the Licensor fails to communicate its decision regarding such material changes within three months of the receipt of such requests, such changes shall be deemed to have been approved by the Licensor.

### **8.8 Landing and Shipping Declaration**

- (a) During the period of construction, the Licensee may inform the Licensor on completion of any material part of the Contracted Assets, that the facilities are ready for declaration as a Landing and Shipping Place for cargo.
- (b) On receipt of such communication, the Licensor shall be entitled to verify that the Licensee has constructed the facilities in accordance with this Agreement and applicable laws.
- (c) The Licensor shall, if satisfied that the Licensee has constructed the facilities in accordance with this Agreement and applicable law, submit an application, within one week of the date of completion of the inspection, to the Customs Department for the declaration of the area as a Landing and Shipping Place.

### **8.9 Date of Commencement of Operations**

- (a) The date of Commencement of Operations of the Port shall be the date of issue of Landing and Shipping Declaration by the Customs under clause 8.8 or the date of expiry of the Scheduled Construction Period whichever is earlier.
- (b) In the event that there is a delay in actual commencement of operations beyond the Scheduled Construction Period and such delay is attributable to a delay in the issue of the Landing and Shipping Declaration by the Custom Department (other than for reasons attributable to the Licensee) then, a day for day extension of the Scheduled Construction Period shall be permitted.

### **8.10 Completion of Construction**

The Licensor shall cause the Leased Premises and the Contracted Assets to be inspected on intimation by the Licensee that the construction of Phase I Contracted Assets are complete and shall, upon satisfying itself of the inspection, issue a "Certificate of Completion of Phase I Construction".

### **8.11 Failure to complete construction**

- (a) In the event that the Licensee fails to :

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- i) complete construction ( or cause construction to be completed ) of the Phase I of the Contracted Assets within the Scheduled Construction Period;  
or
  - ii) achieve any intermediate milestones as may have been agreed to between the parties, subject n both cases to agreed extension.

The Licensee shall pay to the Licensor liquidated damages of Rs. for each day of delay upto a maximum period of 6 months. The quantum of such liquidated damages will be linked to the royalty payments payable by the Licensee to the Licensor based on annual cargo projection in the Approved DPR, and shall, if so required, be realised by invoking the Construction Guarantee.

- (b) In the event that the Licensor has not submitted the application for the Landing and Shipping Place Declaration to the Customs Department within the time period specified in Section 8.8 (c), the Licensor shall pay to the Licensee, liquidated damages of an amount equivalent to the interest during construction payable by the Licensee (in accordance with the estimate in the Approved DPR) for each day of delay upto a maximum period of 6 months.

**8.12** The Licensee agrees that any extension of the Scheduled Construction Period under Section 8 shall be without prejudice to the obligation of the Licensee to complete construction in accordance with this Clause 8.

## **9. Rights Over Assets**

### **9.1 Land and Waterfront**

The Licensee shall be entitled to mortgage the leasehold interest in the land and the waterfront in accordance with the provisions of this Agreement.

### **9.2 Mortgage rights of sub-concessionaires**

The Licensee agrees that sub-concessionaires of the Licensee shall not mortgage and/or create any charge on the Core Assets or the sub-leased title to the land and the waterfront on which such Core Assets are situated without the prior written permission of the Licensor.

## **10. Operations**

From the Effective Date the following provisions of this Clause 10 shall be applicable.

### **10.1 Pilotage**

- (a) The Licensee shall engage and deploy pilots licensed by the appropriate authority under the Gujarat Maritime Board Act for pilotage operations in the port.
- (a) (b) The Licensee shall take all measures as may be necessary to familiarise such pilots with the local waters of the Port and in accordance with the prevalent practices in the ports of Gujarat and guidelines, if any, issued by such appropriate authority.

### **10.2 Operations & Services**

- (a) The Licensee shall in accordance with the principles of Good Industry Practice:
  - i) develop and promote trade and commerce;



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- ii) efficiently manage, make available and maintain the Contracted Assets and the Port facilities consistent with prudent standards of safety and technical sufficiency;
  - iii) provide non-discriminatory access of the facilities to the port users in accordance with the Operating Procedure; and
  - iv) provide the necessary resources for the operations and maintenance of the Port.
- (b) The Licensee shall be entitled to:
- i) exclusive rights for the construction and operation of port facilities and provision of port services within the Port Limits;
  - ii) to provide value added and any other port related services within the Port Limits; and
  - iii) operate the Port subject to applicable law and the terms of this Agreement.

### **10.3 Operating Procedure**

- (a) The Licensee shall prepare and notify the procedure for operation and provision of services at the Port (the "Operating Procedure").
- (b) Any revision in the Operating Procedure shall be made after reasonable advance notice to the port users.
- (c) In the event the Licensee fails to comply with the provisions of Clause 10.3 (a) and (b) above, the Licensor may require the Licensee to comply with:
  - i) the operating procedure applicable to the minor or intermediate ports of the State of Gujarat as prescribed by the Gujarat Maritime Board; or
  - ii) the operating procedure applicable to the Major Ports; or
  - iii) the operating procedure published by other licensees in the State of Gujarat.
- (d) Nothing in Clauses 10.2 and 10.3 shall prevent the Licensee or its subcontractors from entering into separate, specific-user contracts on mutually agreed terms and conditions. Unless otherwise agreed to by the Licensor:
  - i) all such commercial contracts entered into by the Licensee with third parties shall not be inconsistent with the terms and conditions of this Agreement and shall terminate on the expiry or Termination of this Agreement; and
  - ii) the Licensor shall not be liable for any costs or liabilities whatsoever that may arise on the expiry or termination of such commercial contracts.

### **10.4 Priority services**

- (a) The Licensee acknowledges that the Government of Gujarat, Central Government or other public or statutory authorities having jurisdiction over the Port, may direct the Licensee to provide priority services and the Licensee shall comply with all such requests.

The Licensee shall be entitled to levy and collect port charges as per the published commercial tariff schedule of the port and ensure that the entity availing of such priorities carries out cargo handling, vessel servicing operations and other operations commensurate with the prevailing productivity levels of the operations and facilities at the Port.
- (b) The Licensee agrees that the Licensor shall not be liable for any direct or indirect loss, consequential damages or loss of profits to the Licensee in the event that priority services are mandated. The Licensee will keep the Licensor indemnified

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from any claims made by the users of the port or other parties as a result of such priority directives.

#### **10.5 Sub-Contracting of services**

- (a) The Licensee may engage subcontractors for the provision of services. The Licensee shall ensure that the all sub-contractors, agents and/or employees comply with all the relevant provisions of this Agreement. The Licensee acknowledges that it shall remain fully and primarily responsible for the performance of all acts, omissions or faults of such sub-contractors, agents and/or employees as if they were the acts, omissions, faults of the Licensee. To the extent that the terms of such agreements are inconsistent with the terms of this Concession Agreement, they shall be declared null and void.
- (b) The Licensor shall not be liable for any costs or liabilities whatsoever that may arise in relation to such contracts as a result of the expiry or termination of this Agreement.

#### **10.6 Leasing of facilities**

- (a) The Licensee may lease or license the use of the assets constructed by it on the Leased Premises to third parties to be operated and / or used by such third parties/ lessees. The ownership of such assets shall remain vested in the Licensee subject to the terms of this Agreement and the Lease and Possession Agreement.
- (b) The Licensee shall be required to ensure that such third parties/ the lessees comply with applicable law, regulatory directives and the terms of this Agreement.
- (c) All contracts and documents pertaining to leasing or licensing the use of any part of the Leased Premises or of assets shall be governed by the terms of this Agreement and the rights of any person thereunder shall not extend beyond the date of the termination of this Agreement for any reason unless the Licensor has given its written consent to the term of the relevant contract.

#### **10.7 Personnel**

- (a) The Licensee, its sub-contractors, sub-lessees and sub-concessionaires may hire personnel, including the existing GMB personnel, and determine the work practices including the compensation that may be payable to such personnel employed at the Leased Premises.
- (b) The Licensee shall absolutely be liable for any liabilities and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel other than where such liabilities or costs arise due to Licensor's gross negligence. The licensor shall not be responsible or liable for any remuneration, compensation and other monetary liabilities.

#### **10.8 Security**

The Licensee shall provide security at the Leased premises. If the Licensor requests, the Licensee shall engage such number of the Central Industrial Security Force and/or the Gujarat State Industrial Security Force or any other force as may be required at the Licensee's sole cost, in certain locations to protect public interests.

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## **10.9 Maintenance Standards**

The Licensee shall maintain and replace the Contracted Assets in accordance with Annexure

## **10.10 Performance Standards**

The Licensor may appoint a committee of its representative and/or independent experts to assess the performance of the Port, at its own cost, and publish a periodic report for the information of port users.

## **10.11 Interaction of the Licensee with Licensor**

- (a) The Licensee shall submit to the Licensor:
  - i) Bi-annual reports on the compliance with the agreed maintenance standards and replacement schedule for assets as set out in Annexure 6.
  - ii) Bi-annual reports in accordance with Clause 11.1;
  - iii) monthly reports on commodity-wise traffic;
  - iv) six monthly reports on the third parties operating in the Port including the sub-contractors, sub-concessionaires, sub-lessees and users with long term contracts
  - (v) six-monthly reports on the land occupancy pattern at the Leased Premises including a summary of the change in such occupancy over such six-monthly period; and
  - vi) vessel movement reports as may be directed by the Licensor.
- (b) The Licensee shall provide any additional information as the Licensor may require to ensure that the Licensee is in compliance with the terms of this Agreement.
- (c) The Licensee shall ensure un-hindered access and offer necessary co-operation to the Licensor and/or representatives for monitoring and inspection of operations.
- (d) The Licensor shall provide the Licensee with reasonable notice for such inspection and ensure that such inspection shall not interfere with the commercial operations of the port.
- (e) The Licensor may station his representative in the Leased Premises for providing data and reporting information to the Licensor. The Licensee shall provide appropriate office space and tele-communication facilities for such representative at the Licensee's cost.
- (f) In the event that on-line vessel traffic management systems are installed at the Port, the Licensor may require that such systems be linked to the central and/or regional monitoring systems installed by the Licensor and/or navigational authorities and/or other ports.

## **11. Commercial issues**

### **11.1 Traffic Projections**

- (a) The Licensee shall submit annual cargo-wise traffic projections to the Licensor.
- (b) The Licensee shall submit monthly reports on actual cargo-wise traffic and annual variance of actual traffic against annual projections and estimates envisaged in the Approved DPRs.

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## **11.2 Tariff**

### **11.2.1 Tariff Fixation**

- (a) The Licensee shall be entitled to fix and collect fees for all services rendered or performed at the Port and authorised under this Agreement in accordance with applicable law.
- (b) The Licensee shall comply with the provisions of the Indian Ports Act relating to tariff.
- (c) The Licensee may to the extent permitted by law, structure the tariff at its discretion and the currency of denomination of tariff.

### **11.2.2 Public Notification**

- (a) The Licensee agrees and acknowledges that the tariff shall, subject to the provisions of this Clause, be non-discriminatory.
- (b) A comprehensive tariff schedule (“Notified Tariff”) and the time period from which such tariff shall be in effect, shall be notified to the public by the Licensee. Any user shall be entitled to avail the port’s services at the Notified Tariffs. A revision in the Notified Tariff shall be intimated to the Licensor and notified (at the Port premises and in two newspapers being circulated in the area in the local language and English) at least a month before the revisions come into effect.
- (c) The Licensee may customise separate service and tariff packages for specific users from time to time. Such customisation may include long term contracts with large and/or dedicated users.

### **11.2.3 Statutory tariff schedules**

In the event that the tariff is required to be notified in accordance with applicable law, the Licensor/GOG shall take all steps within their power to notify the same in accordance with the applicable law in that behalf.

### **11.2.4 Collection Agency**

Subject to applicable law, all tariffs from users may be collected by the Licensee or by an agency appointed by the Licensee.

## **11.3 Waterfront Royalty Payments**

- (a) From the date of commencement of operation, the Licensee shall pay the Licensor a monthly Waterfront Royalty per ton of cargo handled at the Leased Premises. Such Waterfront Royalty payment shall be based on the actual cargo throughputs achieved, which shall be determined on the basis of customs and other statutory declarations.
- (b) The Licensee shall submit for verification to the Licensor every month, the cargo-wise throughput achieved in that month.
- (e) The total royalty payable by the Licensee shall be the aggregate sum in respect of all types of cargo, of the applicable per ton royalty for each particular type of cargo multiplied by the actual throughput of that particular cargo in the month. The Licensee shall pay Waterfront Royalty payments by cash and/or negotiable instrument on the last day of each month.

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### **11.3.1 Mechanism for payment of Waterfront Royalty**

- (a) The Licensee shall irrevocably choose any one of the following options for Royalty Payments within thirty days of the Effective Date provided that such Waterfront Royalty shall be payable from the Effective Date.

#### **11.3.1.1 Option 1 for Royalty Payments: Straight Line Option**

- (a) Waterfront Royalty for solid cargo and liquid cargo shall be Rs.10 per ton and Rs.20 per ton respectively.
- (b) The Waterfront Royalty shall be subject to an escalation on first of April every three years by an amount equal to 20% of the previous revision.

#### **11.3.1.2 Option 2 for Royalty Payments: Set-off Option**

##### **11.3.1.2.1 Waterfront Royalty**

- (a) The Waterfront Royalty charges on a per-ton-per type of cargo basis payable by the Licensee to the Licensor shall be notified along with the general schedule of port charges by the Government of Gujarat.
- (b) The Waterfront Royalty charges will be subject to escalation on first of April every three years by an amount equal to 20% of the previous revision.

##### **11.3.1.2.2 Royalty Concession**

- (a) The Licensee shall be granted a concession on the royalty payable to the Licensor till such time the Approved Capital Cost of the project is set off against the cumulative concession in royalty granted or till the end of the Term whichever is earlier ("Royalty Concession Period").
- (b) During the Royalty Concession Period, the Licensee shall pay a "Concessional Waterfront Royalty" of Rs.10 per ton of liquid cargo and Rs.5 per ton of solid cargo as against the "Waterfront Royalty" charges published by the Licensor.
- (c) The difference between the Waterfront Royalty and the Concessional Waterfront Royalty shall be set off against the Approved Capital Cost of the project.

##### **11.3.1.2.3 Approved Capital Cost**

The Approved Capital Cost for the purposes of the Royalty Concessions shall mean expenditure under the following heads for Phase I development in accordance with the estimates in the Approved DPR or the actual expenditure as verified by the Gujarat Maritime Board, whichever is lower.

- i) Land Development and/ or Reclamation;
- ii) Contracted Assets;
- iii) Technical studies and/or DPR preparation;
- iv) Other safety investments and/or pollution control assets; and

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- Such verification will be from certificates prepared by Chartered Accountants, Public Accountants and valuers and submitted by the Licensee, which certificates will be duly supported by bills and other documents of manufacturers, suppliers, civil works contractors at the time of installation of such assets.

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- v) Interest during construction limited to IDC approved by financial institution for Phase I of the project.
  - vi) Preoperative expenses & preliminary expenses (excluding expenses for technical studies/DPR preparation) limited to 5% of the estimates of the expenses mentioned in (i) (ii) (iii) (iv) and (v) herein;

#### **11.3.1.2.4 Additions to Approved Capital Cost**

Approved Capital Cost shall be revised for not more than two Major Expansions as specified in 11.7.(b).

#### **11.4 Bank Guarantee**

As security for payment of the land lease rentals and Waterfront Royalty, the Licensee shall execute a bank guarantee from a reputable bank acceptable to the Licensor or any other form of mutually acceptable security (on or behalf the date of transfer of lease hold title and vacant possession of lease premises or a part thereof in case of the land lease and on or before the Date of Commencement of Operations in case of Waterfront Royalty) in favour of the Licensor. The value of Bank Guarantee for the first year shall be an amount equal to the sum of first year land lease rentals and Waterfront Royalty payments. The value of the Bank Guarantee shall be revised every year on first of April to an amount equal to the sum of the previous year's land lease and Waterfront Royalty payments.

#### **11.5 Cargo Restrictions**

The Licensee shall comply with cargo restriction set out in Annexure 9.

#### **11.6 Approval of Contracted Assets**

- (a) The Licensee may, from time to time, request that the Licensor approve additional assets to be constructed or installed at the Port. Such approved assets if approved in writing by the Licensor under this Clause shall be treated as Contracted Assets. In the event that the Licensor's decision is not communicated within 60 days of such request for approval, such assets shall be deemed to have been approved by the Licensor.
- (b) Any studies conducted for the purpose of such additional assets shall be approved by the Licensor and be deemed to have been incorporated in the Approved DPR and shall be an integral part of the same. Provided that any subsequent material changes in the assets to be created shall be subject to prior approval of the Licensor.

#### **11.7 Expansion**

- (a) Any expansions outside the scope of the Approved Development Plan shall be subject to the prior approval of the Licensor.
- (b) Any expansion, including any expansion envisaged in the and /or Approved DPR, entailing capital investment in excess of 25 % of the Capital Cost for Contracted Assets for Phase 1 shall be considered a Major Expansion.

#### **11.8 Captive Jetties**

It shall be the endeavour of the Licensor/GOG to encourage a comprehensive harbor concept for the development of commercial, public user ports and to

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discourage captive jetties. The Licensor shall, for the period up to 2013 AD offer a right of first refusal to the Licensee for the development of new captive jetties within 150 kms of the Port.

### **11.9 Development of new facilities**

The Licensor/GOG shall not develop any new common user port site other than sites identified in the Ports Policy, 1995 of the Government of Gujarat till the year 2008. In the event that the sites identified in the Ports Policy, 1995 are found to be unviable, the Licensor shall be within its rights to develop other sites which are located not less than 150 kms away from the Port, subject however to the maximum number of sites identified in the Ports Policy, 1995.

If the port is not in a position to handle any specialised cargo, in that case, establishment of new port can be allowed by Licensor/GOG for that particular kind of cargo.

## **12. Change in Law**

### **12.1 Definition**

- (a) Change in Law shall mean the occurrence of any of the following events after the Effective Date of this Agreement:
- i) i) the enactment of any new applicable law;
  - ii) ii) the modification, repeal or re-enactment (other than a re-enactment which merely consolidates or codifies existing applicable law) of any existing applicable law;
  - iii) iii) the commencement of any applicable law which had not at the Effective Date yet entered into effect except to the extent such applicable law was enacted prior to the Effective Date with a commencement after the Effective Date and such applicable law takes effect on that commencement date without material amendment;
  - iv) iv) a change in the interpretation or application of any applicable law by judicial or other authority (including a court, tribunal or any other regulatory authority) having the authority to interpret or apply that applicable law or any interpretation of any applicable law by such authority which is contrary to the existing generally accepted interpretation thereof;
  - v) v) the revocation or cancellation (other than for cause) of any permit, or
  - i) vi) designation or re-designation of the Port as a Major Port by the Government of India,
- to the extent that such Change in Law has a material adverse effect on the rights and obligations of the Licensee under this Agreement and that such event has not been caused due to the fault or negligence of the Licensee.
- (b) Notwithstanding anything contained in clause (a) hereinabove, Change in Law shall not include any change in the tax laws or change in law in general applicability but which solely has an economic and financial impact on the Licensee.

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## 12.2 Notification of Change in Law

- (a) The Licensee shall, on the occurrence of a Change in Law, give notice of such Change in Law to the Licensor in accordance with the provisions of this Clause 12 as soon as it may be reasonably practicable.
- (b) The notice served pursuant to this clause shall provide interalia, precise details of the Change in Law and the effect thereof on the Licensee.

## 12.3 Consequences of Change in Law

- (a) In the event that a Change in Law renders exercise by the Licensee of any of its material rights or performance by the Licensee of any of its material rights and obligations, unless such obligation is waived by a person having the power to do so under this Agreement impossible, the Licensee may serve a notice for termination of this Agreement (Termination Notice). Provided that prior to service of the Termination Notice, the parties shall consult in good faith for a period of 180 days to mitigate the material adverse impact of the change in Law. In the event the parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 180 day period, either party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved in accordance with Clause 18.
- (b) The parties hereby acknowledge and agree that:
  - (i) the Licensee shall be entitled to serve a Termination Notice on the Licensor provided that the Change in Law results in physical or legal impossibility of performance of the Licensee's obligations or exercise of its rights under this Agreement. The parties shall bear the respective impact of any economic consequences of Change in Law;
  - (ii) the constitution of a regulatory authority for the regulation of ports and/or the infrastructure sector on the lines of the BOOT principles in Gujarat shall be deemed not to be a Change in Law.

## 13. Force Majeure

### 13.1 Definition

- (a) **"Force Majeure"** ("FM") shall mean any event or circumstance or combination of events or circumstances (and their consequences) set forth in Clauses 13.1.1 and 13.1.2 occurring on or after the Effective Date that materially adversely affect(s) the performance of the Licensor's and/or the Licensee's (Affected Party) rights or obligations under this Agreement provided that such events and/or circumstances
  - i) are beyond the reasonable control, directly or indirectly, of the Affected Party (it being understood that if a causing event is within reasonable control of an Affected Party, the direct consequences shall also be deemed to be within such Party's reasonable control); or
  - ii) could not have been avoided, overcome or remedied if the Affected Party had taken reasonable care or had acted in accordance with Good Industry Practices. (each a "Force Majeure Event")



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- (b) “Reasonable care” includes any acts or activities that protect the Port from a casualty event which are reasonable in the light of the likelihood of such event, the probable effect of such event should it occur, and the likely efficacy of the protection measures.
  - (c) Any event or circumstance meeting the definition of Force Majeure and which adversely affects the performance of the Licensee’s turnkey or any such contractors constructing significant assets for the Port shall constitute a Force Majeure Event for the Licensee.
  - (d) The following conditions shall not, however, constitute a Force Majeure Event unless they are caused due to a Force Majeure Event affecting the Licensee’s turnkey contractors or any such contractors constructing significant assets for the Project:
    - i) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Project; or
    - ii) a delay in the performance of any of the Licensee’s turnkey contractors or any such contractors constructing significant assets.
  - (e) Notwithstanding anything contained in this Clause, insufficiency of funds shall not constitute a Force Majeure Event.

**13.1.1 Political Force Majeure**

- (a) Political Force Majeure shall mean any of the events or circumstances or combination of events and circumstances referred to in (i), (iii) and (iv) below occurring solely in India or any of the events or circumstances or combination of events and circumstances referred to herein below in the State of Gujarat, and which result directly or indirectly in either party’s exercise of its rights and obligations being prevented, hindered or delayed, provided that such events and/or circumstances are not a lawful and/or reasonable response to the default, neglect or other wrongful act of the Affected Party, and provided that the consequences of such events and/or circumstances are beyond the Affected Party’s reasonable control except to the extent that such events and/or consequences constitute or are caused by the events or circumstances of Natural or Other Force Majeure :
  - i) blockade, revolution, riot, bombs, religious strife or civil commotion;
  - ii) political strikes, lock-outs or other industrial action (other than those involving primarily the Licensee’s own employees or those of any of the Licensee’s contractors, sub-contractors, sub lessees, sub concessionaires, any other agents of the Licensee or any act of the Licensee himself) or labour disputes affecting the port sector in Gujarat which are not primarily motivated by the desire to influence the action of an enterprise so as to preserve or improve conditions of employment;
  - iii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, insurrection, terrorist or military action, politically motivated sabotage; or
  - iv) a decision or the order of a court or tribunal which has effect of restraining or delaying the construction of the whole or a substantial part of the Project (except to the extent that it constitutes a remedy or sanction lawfully exercised as result of breach by the Licensee of any applicable law then in effect by the Licensee).

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### **13.1.2 Natural/ Other Force Majeure**

- (a) Natural/Other Force Majeure (OFM) means events or circumstances listed below (except to the extent they constitute or are caused by the events or circumstances of Political Force Majeure):
- i) explosions, accident, breakage of facilities, plant or equipment, structural collapse, fire chemical or radio active contamination (other than resulting from an act of war, terrorism or sabotage), caused by a person not being the Affected Party or one of its contractors or subcontractors, sub lessees, sub concessionaires, or any other agencies of the Affected Party or any of their respective employees, and not being due to inherent defects of the affected facility or the failure to properly operate the affected facility;
  - ii) tidal variations and storm to the extent that such tidal variation and storm could not reasonably have been expected to occur at the place in the year or at the time of the year in question;
  - iii) Lightning, earthquake, tempest, cyclone, hurricane, whirlwind, flood, landslide or any such acts of God;
  - iv) Epidemic or plague; or
  - v) any event or circumstance of a nature analogous to any of the above or an act of God.

### **13.2 Procedure for calling FM**

#### **13.2.1 Notice and particulars thereof**

- (a) The Affected Party shall give notice to the other party of the Force Majeure Event as soon as is reasonably practicable, but not later than fifteen (15) Days after the date on which the Affected Party knew or should reasonably have known of the commencement of the Force Majeure Event. Notwithstanding the above, if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, the Affected Party shall give such notice as soon as is reasonably practicable after the reinstatement of communications, but not later than five (5) business days after such reinstatement.
- (b) Notice shall, inter-alia, specify the:
- i) the nature of such Force Majeure Event;
  - ii) the date and time when the Affected Party was materially and adversely affected by the Force Majeure Event;
  - iii) the material adverse effect of such Force Majeure Event on the Affected Party;
  - iv) the measures which the Affected Party has taken, or proposes to take, to alleviate the impact of those Force Majeure Events and/or mitigate the damage;
  - v) an estimate of the period of time that the Affected Party shall be unable to perform its obligations and/or continue to be materially adversely affected by the Force Majeure Event; and
  - vi) any other relevant information as may be necessary.
- (c) Failure by the Affected Party to give notice to the other party within the time period specified above shall not prevent the Affected Party from giving such

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notice at a later time, provided however that in such case the Affected Party shall not be eligible for the remedies as envisaged in Clause 13.6 for any failure or delay in complying with its obligations under or pursuant to this Agreement until notice has been given in accordance with this Clause 13.2.1.

### **13.2.2 Reporting requirements**

- (a) For so long as the Affected Party continues to claim to be affected by the Force Majeure Event, it shall provide the other party with regular (and not less than monthly) written reports containing:
  - i) the information called for by Clause 13.2.1 hereabove; and
  - ii) such other information as the other party may reasonably request.
- (b) The Affected Party shall also provided to the other party reasonable facilities including site inspection for obtaining further information about the Force Majeure Event or circumstance alleged to constitute a Force Majeure Event .

### **13.3 Force Majeure period**

- (a) In this Clause, reference to Force Majeure period shall mean the period from the date and time specified in the notice given by the Affected Party in respect of a Force Majeure Event, until such time as the impact of the Force Majeure on the Affected Party is no longer, or would no longer have been materially adverse, if the affected Party had complied with its obligations under this Clause, materially adverse.
- (b) On expiry of the Force Majeure period, the Affected Party shall forthwith give notice to that effect to the other party.
- (c) In the event that such notice is not tendered by the Affected Party to the other party within a week from the expiry of the Force Majeure period, the other party may serve such notice to the Affected Party.

### **13.4 Obligation to Perform**

- (a) From the date of expiry of the Force Majeure period, the obligations of the Affected Party under this Agreement shall no longer be suspended.
- (b) Provided that the performance of the Licensee's obligations and liabilities shall, for the Force Majeure period, be governed by Clause 13.6.
- (c) Nothing in this Clause 13 shall affect the Licensee's obligation to make any payments in respect of liabilities incurred prior to the occurrence of any Force Majeure Event.

### **13.5 Mitigation Responsibility**

- (a) Upon the occurrence of the Force Majeure Event and during the subsistence of the Force Majeure period, both the parties shall engage in good faith consultations and shall use all reasonable endeavours to alleviate the material adverse effect of such Force Majeure.
- (b) The Affected Party shall use the insurance proceeds to mitigate the impact of the Force Majeure Event.

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## **13.6 Consequences**

### **13.6.1 Consequences of Political Force Majeure; Natural/Other Force Majeure**

Provided that the Affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Clause 13.5, and during the Force Majeure period continues to comply with the same, the Affected Party shall be entitled to following relief:

- i) the obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be suspended for Political Force Majeure period or Natural / Other Force Majeure period, as the case may be;
- ii) the time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended on a day for day basis for the Political Force Majeure period or Natural / Other Force Majeure period, as the case may be; and
- iii) the Term of this Agreement shall be extended on a day for day basis for the Political Force Majeure period or Natural / Other Force Majeure period, as the case may be.

## **14. Default & Termination**

### **14.1 Licensee Event of Default - Right of Licensor to terminate**

The following (unless arising as a result of a Force Majeure Event or Change in Law which results in consequences set out in 12.3 (a) or a Licensor Default) shall constitute Licensee Events of Default.

- i) A material breach of a material provision of this Agreement by the Licensee.
- ii) Repudiation of this Agreement by the Licensee or the evidencing of an intention by the Licensee not to be bound by the terms of this Agreement.
- iii) appointment of a provisional liquidator providing for winding up of the Licensee, after notice to the Licensee and due hearing, unless such appointment has been set aside within 45 days.
- iv) The Licensee is ordered to be wound up by a court or files a petition for voluntary winding up except for the purpose of amalgamation or reconstruction provided that the property, assets and undertaking of the Licensee are transferred to its successor; and provided that such amalgamation or reconstruction does not adversely affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement, the successor has assumed in writing unconditional responsibility for the performance of the Licensee's obligations and the technical, financial and operating capability of the successor should be satisfactory to the Licensor and is not prejudicial to national interest as determined by the Licensor.
- v) The Licensee abandons the construction or operation of the Port and the facilities for a continuous period of 45 days.
- vi) Persistent failure on the part of the Licensee to operate and promote activities at the Port and provide port users with services in accordance with the principles of Good Industry Practice and in accordance with the

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- provisions of this Agreement.
  - vii) Failure to pay Waterfront Royalty for a consecutive period of 6 months.
  - viii) Failure to comply with lawful directives given by a statutory authority connected with ports.

#### **14.2 Licensor Events of Default - Right of Licensee to terminate**

The following (unless arising as a result of a Force Majeure Event, or Licensee Default) would constitute Licensor Events of Default:

- i) Performance of any acts set forth in Annexure 2 by the Licensor and/or Government of Gujarat.
- ii) Repudiation of this Agreement by the Licensor or the evidencing of an intention by the Licensor not to be bound by the terms of this Agreement.
- iii) Commission of a material breach of a material provision of this Agreement.
- iv) Dissolution of the Licensor or occurrence of any structural changes within the present constitution of the Licensor which have a material adverse effect on the rights and obligations of the Licensee under this Agreement, or the transfer of the Licensor's undertaking and statutory powers or any material part thereof, unless such dissolution or structural change or transfer is in connection with privatisation or other restructuring of all or any substantial part of the Licensor, and the Licensor's successor is able to perform the Licensor's obligations under this Agreement, provided that
  - 1) the undertaking and statutory powers of the Gujarat Maritime Board (the "Board") are transferred to the Board's successor and such entity has the powers to continue as Licensor; and
  - 2) the Board's successor has assumed in writing the responsibility for performance of the Board's obligations hereunder.
- v) v) The Licensor fails to submit the application to the Customs Department under Clause 8.8 within a period of 6 months, from the date of completion of inspection in accordance with the provision of Clause 8.8.

#### **14.3 Consequences of Default**

In the event of a Licensor Event of Default or Licensee Event of Default ("Event of Default") the termination procedure as set out in this Clause shall apply.

##### **14.3.1 Notice of Intent to Terminate**

- (a) On the happening of any Event of Default as set out above, the non defaulting party may initiate termination of this Agreement by delivering a notice to the defaulting party of intention to terminate this Agreement (Notice of Intent to Terminate). The non defaulting party shall also send copy of the Notice of Intent to Terminate to the Lenders.
- (b) The Notice of Intent to Terminate shall specify with reasonable detail the defaults committed by the defaulting party.

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### **14.3.2 Lenders rights to rectify**

- (a) If Notice of Intent to Terminate is issued by the Licensor for non payment of any amount due and payable by the Licensee or for any other Licensee Event of Default, the Lenders shall, within a period of 90 days from the date of issue of the Notice of Intent to Terminate, have the right to rectify the default and take all such acts as may be necessary for such purpose.
- (b) In the event Lenders exercise the right to cure the default, the Lenders shall pay all sums then due and payable to the Licensor alongwith interest at prevailing bank rate, or in any other manner assist the Licensee in rectifying the Event of Default. If the Event of Default is cured within such period of 90 days:
  - i) The Notice of Intent to Terminate shall stand revoked without prejudice to the rights of Licensor to issue similar notice for any subsequent breach or any other breaches by the Licensee; and
  - ii) The Licensee shall continue to perform its obligations under this Agreement as if Notice of Intent to Terminate was not issued.
- (c) The Lenders rights under this Clause 14.3.2. shall continue to remain in force during the termination procedure and till the issue of the Termination Notice.

### **14.3.3 Remedy Period**

- (a) Following the service of the Notice of Intent to Terminate, the defaulting party shall have a period of 90 days (“Remedy Period”) to cure the Event of Default pursuant to which the Notice of Intent to Terminate was issued.
- (b) During the Remedy Period, the defaulting party may continue to undertake efforts to cure the default, and the non defaulting party shall not, by any act or omission, impede or otherwise interfere with the defaulting party’s endeavours to remedy the Event of Default.
- (c) During the Remedy Period, both the parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement.

### **14.3.4 Withdrawal of Notice of Intent to Terminate**

If, during the Remedy period, the defaulting party rectifies or remedies the default to the satisfaction of the non defaulting party or the non defaulting party is satisfied with steps taken or proposed to be taken by the defaulting party or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist, the non defaulting party shall withdraw the Notice of Intent to Terminate in writing with a copy to the Lenders.

### **14.3.5 Termination Notice**

- (a) Upon the expiry of the Remedy Period, unless the parties have otherwise agreed to, or the Event of Default giving rise to the Notice of Intent to Terminate has ceased to exist or the default has been rectified or remedied by the defaulting party or a Lender, the non defaulting party may terminate this Agreement by giving a 90 days written notice (“Termination Notice”) to the defaulting party, with a copy to the Lenders.
- (b) Upon the expiry of such notice period unless the Lenders have successfully exercised the right of substitution in accordance with the provisions of this Agreement, this Agreement shall stand terminated and the provisions of Clauses 15 and 16 shall be applicable.

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#### **14.3.6 Transfer Information Notice**

- (a) Upon service of the Termination Notice in accordance with the provisions of this Clause 14 on the defaulting party, or the service of a Termination Notice for Change in Law, the Licensor shall be entitled to serve upon the Licensee a Transfer Information Notice calling upon the Licensee to provide the following
  - i) all or any data or records regarding the operation or maintenance of the Port and the Project;
  - ii) any other information or records regarding the Licensee, its business, assets and liabilities, and
  - iii) statement of immovable and movable Contracted Assets,to enable an estimation of the likely compensation, if any, payable by the Licensor to the Licensee.
- (b) On receipt of the Transfer Information Notice, the Licensee shall cause to be conducted, by third party experts approved by the parties, a condition survey of the entire Port to ascertain the condition and quality of the various facilities provided by the Licensee and whether or not the Licensee has complied with the provisions of this Agreement. A report by such surveyor including an inventory and the condition of the Contracted Assets shall be submitted to the Licensor as part of the requirements of the Transfer Information Notice within three months of receipt of such notice.

#### **14.3.7 Lenders' Rights of Substitution**

- (a) If the Termination Notice is issued by the Licensor for a Licensee Event of Default:
  - i) within 30 days from the date of service of the Termination Notice, the Lenders (those to whom 75% of total outstanding is due ) or such Lenders' agents may approach the Licensor with a request to replace the Licensee by another operator (Replacement Notice) for operating the Port under this Agreement. The Replacement Notice shall indicate the name(s) of the Nominated Licensee(s) (NL) proposed to substitute the Licensee for the purpose of this Agreement. The Licensor and the Lenders will then consult for a period of 30 days as to the suitability of the NL. If the NL does not meet the qualifying criteria (the original bid selection criteria that were employed in the case of competitively tendered ports and similar criteria, but also reflecting site-specific criteria, if necessary in the case of the joint sector ports), then such NL shall be deemed not to be technically, financially or managerial competent to operate the Port and Licensor shall be entitled to reject such NL. The Licensor shall also be entitled to reject such NL on grounds of public interests.
  - ii) On appointment of a new NL in accordance with the provision (a) i) above, the novation of this Agreement shall be effected by the Licensor with the new NL and the Licensee shall transfer all rights, title and interests in the Leased Premises and the Project to the NL, and this Agreement shall come to an end. The decision of the Licensor as to the acceptability of the NL shall be final and binding.
- (b) If within 90 days from the date of Termination Notice, the NL acceptable to the Licensor does not execute a novation of this Agreement, the Licensor may

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terminate this Agreement on the expiry of the 90 day Termination Notice period as if no Replacement Notice had been served.

#### **14.3.8 Procedure for appointing an Appraising Team**

- (a) Within 21 days after the expiry of the Termination Notice pursuant to Clause 14.3.5(b) or on the issue of the Termination Notice (in the event of Termination due to Change in Law), the party issuing such notice shall provide the other party with a list of acceptable members (individuals or firms or consortia of individuals or of firms or of a combination thereof) to constitute the Appraising Team who are experienced in the methods of Valuation prescribed in Clause 15 to carry out a determination of the Final Compensation Payable. The Appraising Team shall include a
- i) port and harbour engineering expert;
  - ii) transport economist; and
  - iii) financial expert.
- (b) In the event the party receiving the list of members does not agree to the appointment of an Appraising Team selected from the list within 15 days after it receives such list, either party may ask the Expert Committee to nominate an independent Indian firm of chartered accountants and that person shall be designated as the financial expert in the team undertaking the Appraisal. This financial expert shall then form an Appraising Team selecting such experts from those in (a) i) and (a) ii) above or from other qualified and experienced experts in the field as he deems appropriate for the task.
- (c) From the date of such appointment, the procedure set out for Normal Transfer and Termination would apply mutatis mutandis.
- (d) However, until such time as the Port and the Leased Premises or any parts thereof, are handed over by the Licensee to the Licensor (equivalent to the **Date of Actual Transfer** in the course of Normal Transfer), both the parties shall use all reasonable efforts to operate and maintain the Port as per the provisions of this Agreement.
- (e) If this Agreement has been terminated in accordance with the provisions hereof, the Licensee shall, until Actual Date of Transfer, be entitled to the revenues, if any during the appraisal process referred to in this Clause.

#### **14.4 Step-in rights**

- (a) The Licensee agrees that the Licensor (on its own or acting on behalf of the Government of Gujarat and/or the Government of India ) or the Government of Gujarat and/or the Government of India shall be entitled to operate the Port on the occurrence of the following events:
- i) Licensee Event of Default;
  - ii) an emergency (being a condition or situation which in the reasonable opinion of the Licensor, poses a significant threat to the safe operation of the Port or which seriously endangers the security of persons, plant or equipment); or
  - iii) for national security reasons.
- (b) In the event of a Licensee Event of Default, the Licensor may (but shall not be obliged) operate the Port upon the issue of the Termination Notice under the provisions of Clause 14. Notwithstanding the exercise of step in rights, the provisions of Clause 14 shall continue to apply.



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- (c) Upon the occurrence of the events specified in (a) ii) and (a) iii) above, the Licensor, Government of Gujarat and/or Government of India may exercise step-in rights during which period
    - i) the Licensor shall be entitled to all revenues and liable for all standing, and operating expenses including debt servicing relating to the facilities taken over;
    - ii) the Licensor shall not be liable to compensate the Licensee or any other person or the long-term users for any losses or estimated loss of profits during such period or any return on equity.
  - (d) After a maximum period of one year, the facilities shall revert to the Licensee in the same condition, save for normal wear or tear. In the event of any dispute regarding the condition of facilities reverting to the Licensee, the same may be referred to the Expert Committee.
  - (e) The Licensee shall be entitled to an extension of the Term of the Agreement for the duration of exercise of step-in rights by the Licensor, Government of Gujarat and/or the Government of India.
  - (f) Without prejudice to clause 14.4(c), in the event that the step-in rights are exercised by the Licensor, Government of Gujarat and/or the Government of India for a period in excess of 1 year, the parties shall determine, in good faith, the compensation payable to the Licensee for the loss of income. In the event that the parties are unable to agree on the compensation, the dispute resolution provisions under Clause 18 may be invoked by either party.

**15. Compensation Payable on Early Termination/Normal Transfer: Scope of Transfer & Principles of Valuation**

**15.1 Scope of Buy-out in Early Termination/ Normal Transfer**

- (a) The scope of take-over of assets shall include all assets prevailing at the Leased Premises as at the date of Transfer Information Notice, and shall, inter alia, include:
  - i) all land and buildings;
  - ii) plant and machinery;
  - iii) spare parts;
  - iv) such deeds and documents as may be necessary for effectively transferring (in respect of the above) rights, title and all other interests under this Agreement in favour of the Licensor free of all encumbrances;
  - v) the benefits of all rights and interest in all unexpired insurance, guarantees and contractor warranties if so desired by the Licensor; and
  - vi) all documents, manuals, records etc. as may be required for the efficient operation of the Port.
- (b) The takeover and compensation shall relate only to tangible assets and such intangibles (such as capital dredging) identified for the purposes of this Clause in the Approved DPRs.
- (c) Asset purchase shall exclude cash in hand and cash at bank, financial investments, loans and advances, the benefit of any refund of tax attributable to the period prior to the date of Transfer Information Notice, and trade and book debts or receivables accruing to the Licensee prior to the date of Transfer Information Notice (unless due consideration for the same can be mutually agreed upon between parties).

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- (d) Unless otherwise specifically agreed to, miscellaneous assets and other intangible assets (such as goodwill) shall also stand excluded from the scope of asset takeover and compensation.
  - (e) Leased land shall revert to the Licensor free of any consideration and encumbrances.
  - (f) Reclaimed land shall also revert to the Licensor along with, and as part of the Leased Premises, and shall be compensated for at the amortised cost of original certified cost of reclamation as at the date of valuation by the Appraising Team.
  - (g) The provisions of this Clause shall apply to all assets on the Leased Premises, as reflected on the balance sheet of the Licensee, its affiliates, and/or subsidiaries. The Licensee undertakes to ensure that the provisions of this Clause shall be reflected in any agreement that may be entered into between the Licensee and a sub-lessee/sub-concessionaires/sub-contractors or any other party for construction of assets or provision of services at the Port.

## **15.2 Treatment of and Valuation Approach to Immovable, Movable Contracted Assets**

### **15.2.1 Immovable Contracted Assets and Essential Movable Contracted Assets**

#### **15.2.1.1 Normal Transfer**

The Immovable and Essential Movable Contracted Assets shall be transferred to and shall vest in the Licensor at the end of the Term of this Agreement for a consideration equivalent to the Depreciated Replacement Value (“DRV”) of the Contracted Assets

#### **15.2.1.2 Licensor Default and CIL**

- (a) The Licensee may require the Licensor to purchase the Immovable and Essential Movable Contracted Assets for a consideration equivalent to the Depreciated Replacement Value of such Contracted Assets.
- (b) In the case of Licensor Default occurring any time during the first 15 years from the Effective Date, a solatium of thirty percent (30%) of DRV plus DRV shall be paid to the Licensee. A solatium of twenty percent (20%) of DRV plus DRV shall be paid, in case of Licensor Default, from the beginning of sixteenth till the end of twenty fifth year. No solatium shall be paid after the twenty fifth year till the expiry/termination of the agreement.

#### **15.2.1.3 Licensee Default**

- (a) The Licensor shall purchase the Immovable Contracted Assets and Essential Moveable Contracted Assets for a consideration equivalent to 50% of the Depreciated Historical Cost (“DHC”).
- (b) If termination is on account of a material non provision of Contracted Assets by the Licensee, the consideration shall be 50% of the DHC provided that the Licensor’s liability to pay shall arise only upon recovery of such amounts upon re-tender of the assets or the Concession.

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### **15.2.2 Movable Assets**

The Licensee shall take away the Movable Contracted Assets except the Essential Movable Contracted Assets in the event of Normal Transfer or early termination of this Agreement, at its own cost within a period of 12 months from the Scheduled Date of Normal Transfer, in the event of expiry of the Term of this Agreement and within a period of 21 months from the date of appointment of the Appraising Team in the event of Termination of this Agreement.

### **15.3 Valuation Principles**

#### **15.3.1 Asset Valuation Practices**

- (a) Valuation of Immovable Contracted Assets and Essential Movable Contracted Assets based on the Depreciated Replacement Value (DRV)- of assets shall be carried out in accordance with the most recent guidelines of the Assets Valuation Standards Committee, Statements of Asset Valuation Practice and Guidance Notes, The Royal Institution of Chartered Surveyors, United Kingdom, publication dated January 1995 or as amended from time to time.
- (b) The valuation of Immovable Contracted Assets and Essential Movable Contracted Assets, which are still under construction and/or yet to be commissioned (i.e. Capital Work in Progress), shall be based on the Book Value of such assets. (The guidelines set forth in Annexure 4 shall also be applicable for the purpose of such valuation).
- (c) For the valuation of Immovable Contracted Assets and Essential Movable Contracted Assets based on the Depreciated Historical Cost, depreciation shall be calculated on straight line basis. The life span of the assets for the purpose of depreciation and the original cost of such assets shall be as prescribed and set forth in Annexure 4.
- (d) The asset value of each asset computed as per the above guidelines shall be termed as the "Fair Value".
- (e) In computing the Fair Value of assets in the following events, no account shall be taken for any diminution in value attributable to:
  - i) Licensor Default or
  - ii) GoG/ GoI Change in Law
- (f) The valuation of assets and the compensation payable shall be entirely denominated in Indian rupees.
- (g) For avoidance of doubt, it is hereby clarified that valuation of assets both Immovable Contracted Assets and Essential Movable Contracted Assets shall not be done on a "going concern" basis.

#### **15.3.2 Compensation Payable**

- (a) For Normal Transfer or on Termination of this Agreement as a result of Licensor Default, Change in Law or Licensee Default, as the case may be, the aggregate of the Fair Value compensation payable in respect of each asset shall be hereafter defined to be the "First Estimate of Compensation".

- (b) The First Estimate of Compensation shall be corrected for any outstanding penalties and dues payable by the Licensee to the Licensor and/or any damages suffered by the Licensor and attributable to the Licensee.
- (c) The First Estimate of Compensation shall also stand reduced by the amount of any insurance proceeds receivable and/or any compensation receivable from any body and/or any amount payable by the Central/ State Government and shall be corrected in respect of any adjustments that may be deemed necessary by the Appraising Team.
- (d) The final amount so arrived at after the aforesaid adjustments would be the “Final Compensation Payable”.

**15.3.3 Procedure for Valuation**

The Valuation shall be conducted by an independent Appraising Team appointed in accordance with the provisions of Clauses 14.3.8, 15 and 16

**15.4 Transfer fees and Charges**

Transfer fees and charges, if applicable, and other incidental expenses incurred at the time of Termination or Normal Transfer shall be borne by the Licensor and Licensee in the following proportion :

| Head of Charge   | Onus  |
|--|---|
| 1. Transfer fees or stamp duties, recording costs, notarial fees   | Party in default or on expiry of this Agreement, the Licensor.<br>Licensor for Termination due to CIL |
| 2. Fees to third party experts for any required inspections or certifications                                | Shared by both parties  |
| 3. Fees to Appraising Team   | Shared by both parties  |
| 4. Internal costs and expenses of each party (management time, cost of surveys, inventories, inspections etc | To be borne by each Party respectively  |

**15.5 Licensor Liability**

In the event of Normal Transfer or Termination of this Agreement, the Licensor shall not be liable for any liability and/or damages to the Licensee or to any other third party except in accordance with the provisions of this Clause.

**16. Normal Transfer**

**16.1 Term of Concession**

Unless otherwise provided for, this Agreement shall become effective on the Effective Date and shall, subject to termination under the provisions of this Agreement, be in force and effect for a period of thirty (30) years from the Effective Date (“Term”). The date of expiry of the Term shall be the Scheduled Date of Normal Transfer.

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Additional period limited to maximum of two (2) years or the period by which Transport Infrastructure Linkages are in place as identified in Approved DPR of Phase I shall be granted to Licensee and shall be treated as over and above the period 30 years. Accordingly, Schedule Date of Normal Transfer shall also be construed to have been extended by the corresponding period.

## **16.2 Procedure for Normal Transfer**

- (a) The Licensor shall issue a Transfer Information Notice at least 12 months before the Scheduled Date of Normal Transfer and such notice shall be construed in accordance with the provisions of Clause 14.3.6.
- (b) The scope of transfer of the assets, the consideration payable, and the transfer fees and charges at the time of Normal Transfer/Termination shall be determined in accordance with the provisions of Clause 15.

### **16.2.1 Survey, Monitoring Schedule prior to Transfer**

- (a) On receipt of the Transfer Information Notice, the Licensee shall cause a condition survey of the entire Leased Premises to be conducted, by a third party professional body of expert, to ascertain whether the various facilities provided by the Licensee are in working condition and whether the Licensee has complied with the provisions of this Agreement. The Licensees shall submit a report of the results including inventory details and the condition of the Contracted Assets and the condition of the assets to the Licensor within three months of receipt of the Transfer Information Notice.
- (b) The Licensee shall also offer cooperation to the independent Appraising Team at the time of valuation of the assets.

### **16.2.2 Appointment of Independent Appraising Team**

The Licensor and Licensee shall by mutual consent agree to appoint an independent Appraising Team at least 1 year (12 months) prior to the Scheduled Date of Normal Transfer. The composition of the Appraising Team shall be in accordance with the provisions of Clause 14.3.8.

### **16.2.3 Valuation Procedure**

- (a) The Appraising Team shall undertake the valuation in accordance with the provisions of Clause 15. During the valuation process, the Appraising Team shall consult the parties and both parties shall be entitled to be present during all such consultations and shall keep them advised of the progress of the valuation. Each party shall promptly supply relevant information as may reasonably be requested by the Appraising Team, and shall give the Appraising Team access to such of its books, records, other documents and access to the Leased Premises as the Appraising Team may reasonably require.
- (b) A valuation report shall be submitted to both the parties within 9 months of the appointment of the Appraising Team.
- (c) In the event of an objection by one party on account of fraud or error in the valuation report such party shall notify the other Party and the Appraising Team within 7 Days of issue of the valuation report.

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- (d) The Appraising Team shall act as an expert and not as an arbitrator. In the event of dispute the decision of the Appraising Team shall be subject to the dispute resolution provisions under this Agreement.
  - (e) The parties shall bear the costs and expenses of the Appraising Team in accordance with the provisions of Clause 15.4.

**16.2.4 Payment of the Final Compensation Payable in the Event of Normal Transfer**

- (a) 20% of the Final Compensation Payable shall be made on the Scheduled Date of Normal Transfer.
- (b) 30% of the Final Compensation Payable shall be paid within 6 months from the Scheduled Date of Normal Transfer.
- (c) The remaining 50% shall be paid within 18 months of the Scheduled Date of Normal Transfer.
- (d) In the event of a default in payment of the Final Compensation payable in accordance with the provisions of this Clause, the Licensor shall be liable to pay a default interest equal to the then prevailing bank rate plus 2% per annum for each day such amount in default is outstanding.

Provided that in case of termination due to a Licensor Event of Default, the Licensor shall pay to the Licensee the Final Compensation Payable within 180 days of the date of transfer of the Leased Premises to the Licensor.

**16.2.5 Final survey**

In the event of Normal Transfer the Licensor along with the Appraising Team shall conduct a final survey of the Leased Premises and the facilities 2 months prior to the Scheduled Date of Normal Transfer. Adjustments, if any, regarding the scope and condition of the assets then prevailing at the Leased Premises shall be accounted for and reflected in the Final Compensation Payable.

**16.2.6 Transfer of the facilities and Leased Premises**

- (a) In the event of Normal Transfer, and final transfer of the facilities and the Leased Premises shall be effected within 60 days of the Scheduled Date of Normal Transfer ["Actual Date of Normal Transfer"].
- (b) In the event of Termination, the final transfer of the facilities and the Leased Premises shall be effected within 60 days of the submission of the valuation report by the Appraising Team.

**16.2.7 Passing of Risk**

Until the Actual Date of Normal Transfer, the Leased Premises shall remain at the sole risk of the Licensee, and the Licensee shall be solely responsible for any loss of or damage caused to or suffered by the Licensee for any reasons whatsoever to whole or any part of the Leased Premises, unless such loss or damage caused to or suffered by the Licensee is due to any act of default or omission or negligence on the part of the Licensor.

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### **16.2.8 Training and Transfer of Know-how**

- (a) Six months prior to the Scheduled Date of Normal Transfer or six months from the date of Termination of this Agreement pursuant to Clause 14.3.5 or issue of Termination Notice (for termination due to CIL)(as the case may be), the designated key personnel of the Licensor shall be associated with the operations and shall be trained by relevant personnel of the Licensee at the Port to facilitate smooth transfer to the Licensor.

## **17. Insurance**

### **17.1 Covers to be taken**

The Licensee shall on and from commencement of construction, maintain or cause to be maintained at its own expense, insurance policies as are customary or may in the future become available on commercially reasonable terms and as are required in the Financing Documents, including but not limited to:

- i) Builder's all risk insurance;
- ii) Marine cum erection insurance and/or breakdown insurance;
- iii) Public liability insurance;
- iv) Statutory insurances such as workmen's compensation insurance, or any other insurance as may be required by applicable law and practice; and
- v) Insurance policies available through insurance or reinsurance related to
  - 1) any of the obligations of the Licensee as per this Agreement; and
  - 2) Natural and/or other Force Majeure or events which affect the performance of obligations of the Licensee and/or the commercial viability of the Project, including loss of business insurance

### **17.2 Exclusion**

Where this Agreement provides for remedies and/or compensations for any event due account shall be taken for remedies customarily available and/or then available through insurance and/or reinsurance covering damages related to such event. No compensation shall be paid for losses that should have been insured, but were not insured by the Licensee.

### **17.3 Proof of insurance**

- (a) The Licensee shall furnish to the Licensor copies of certificates and policies of insurance referred to in Clause 17.1 as soon as reasonably possible after they have been received by the Licensee and from time to time shall furnish evidence to the Licensor that all relevant premiums have been paid and that the relevant policies remain in existence.
- (b) Failure by the Licensee to obtain the insurance coverage or certificates of insurance required pursuant to this Clause 17 shall not relieve the Licensee of all or any of its obligations herein or in any way relieve or limit the Licensee's obligations or liabilities under any other provisions of this Agreement.
- (c) If the Licensee shall fail to effect and/or maintain insurance in accordance with this Clause, the Licensor may effect the insurance at the full cost and expense of the Licensee. The cost and expense shall be due and payable by the Licensee to the Licensor within 7 days of notice from the Licensor to the Licensee.

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**17.4 Application of the insurance proceeds**

Subject to any agreement between the Lenders, all insurance claim paid to the Licensee shall be applied for reconstruction of the Project except for insurance proceeds unrelated to physical damage.

**18. Dispute Resolution**

- (a) Save as expressly stated to the contrary in this Agreement or where this Agreement provides that a dispute shall be referred to the Expert Committee for resolution, any dispute or difference of whatsoever nature howsoever arising under, out of, or in connection with this Agreement between the parties shall be referred to the dispute resolution procedures as set out hereafter.
- (b) Each party shall select and appoint one senior representative within a period of 60 days from the day on which the notice of dispute has been sent by one party to the other. The representatives shall meet in Ahmedabad as and when necessary from time to time and attempt in good faith and use their best endeavours at all times to resolve the dispute and produce written terms of settlement.
- (c) If the dispute has not been resolved as evidenced by the signing of the written terms of settlement within 180 business days after the receipt of the notice as provided in clause 18 (b) above, the provisions of clause 18 (d) herein below shall be applicable.
- (d) In the event that the dispute has not been resolved in accordance with the provisions of clause 18 (a) to (c) herein above, such dispute shall be submitted to arbitration and shall be finally determined in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof.
- (e) The venue of arbitration shall be Ahmedabad and the language of arbitration shall be English.

**19. Indemnities**

- (a) The Licensee shall comply with all applicable laws in accordance with the obligations of the Licensee under this Agreement. The Licensee shall be liable for and shall defend, hold harmless and indemnify the Licensor against all losses, claims and costs arising out of the Licensee's performance of the Agreement, breach of the Agreement, claims of personnel, claims of users in the event of disruption in service caused due to berthing directives and claims of third parties in the nature of sub-concessionaires, lessees, construction contractors, subcontractors for services and other such parties (unless otherwise provided for in this Agreement).
- (b) The licensee hereby agrees and undertakes that the licensee shall indemnify the licensor for all the acts done prior to the Effective Date.
- (c) The licensee hereby agrees and undertakes that during the license period it shall indemnify and keep indemnified and otherwise save harmless, the licensor, its agents and employees, from and against all claims, demand, made against and/or laws cause and/or damages suffered and/or cost, charges/expenses incurred or put to and /or patently 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 licensor or its agents and employees or third party as a result of any acts, deeds or things done or omitted to be done by licensee or a result of failure on the part of



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licensee to perform any of its obligations under this Agreement or on the licensee committing breach of any of the terms and conditions of this Agreement or on the failure of the licensee to perform any of its statutory duty and/or obligations or failure or negligence on the part of the licensee to comply with any statutory provision or as a consequence of any notice, show cause notice, action, suit or proceedings given initiated, filed or commenced by consignee or owner of the goods or vessel owners/agents or its employees or any third parties or Government Authority or as a result of any failure or negligence or wilful default of the licensee or its contractor(s), sub contractor(s), sub licensee, invitee or employees, servants, agents of such contractors(s) and/or sub contractor(s) and/or sub licensees and/or invitee as the case may be in connection with or arising out of this Agreement and/or arising out of or in connection with the licensee's use and occupation of licensed premises and/or terminal.

- (d) The Licensor agrees to defend, hold harmless and indemnify the Licensee against any direct loss caused to the Licensee due to wilful default by the Licensor or due to breach of the terms of this Agreement save and except any losses in respect of any disputes arising out of land acquisition and relief and rehabilitation measures.
- (e) Without prejudice to clause 12, 13 and 14, neither party shall be liable to the other party for any indirect, consequential, incidental, punitive or exemplary damages or for loss of profit, consequential financial or economic loss or any disruption in the flow of traffic into the Port for any reason whatsoever.

## **20. Assignment**

- (a) The Licensee shall not assign / transfer his leasehold interest in leasehold land to third party sub-leases during the development phase of the project without prior permission of the Licensor
- (b) The Licensee shall not assign or transfer all or any of its obligations or liabilities under this Agreement, or its interest in the Core Assets except to the Lenders financing the Project.
- (c) The right of the Lenders, upon assignment of the rights and obligations under this Agreement or interest in the Core Assets, to substitute the Licensee shall be subject to the approval of the Licensor as regards the identity of the transferee and the provisions of Clause 14.3.7 shall apply, mutatis mutandis.
- (c) Any transfer of interest in the Core Assets by sub-concessionaires shall be subject to the prior approval of the Licensor as regards the identity of the transferee and the provisions of Clause 14.3.7 shall apply, mutatis mutandis.
- (d) Any change in ownership of assets (other than Core Assets) of value greater than Rs.200 lakhs shall be intimated to the Licensor by the Licensee as soon as reasonably practicable.
- (e) In the event the Licensor exercises its rights to take over the assets at the time of Normal Transfer or Termination of this Agreement, the Licensee shall ensure that all existing charges and encumbrances, in respect of such assets, are extinguished upon the payment of Final Compensation Payable.

## **21. Miscellaneous Provisions**

### **21.1 Amendments etc.**

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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.

**21.2 Agreement to Override Other Agreements; Conflicts**

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.

**21.3 No 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.

**21.4 Severance of terms**

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

**21.5 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.

**21.6 Confidentiality**

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 Clause 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

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- (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.

### **21.7 Notices**

Any notice to be given hereunder 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:

#### **LICENSOR**

GUJARAT MARITIME BOARD  
Block No.0/20, New Mental Hospital Compound  
Meghaninagar, Ahmedabad-380 016

ATTENTION : VICE CHAIRMAN & CHIEF EXECUTIVE OFFICER

Tel.No. 091-79-3238346/3238347  
Fax No. 091-79-3234703

#### **LICENSEE**

ATTENTION : MR

Tel.No.

#### **CONFIRMING PARTY**

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. In case any party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other parties in writing to the adoption thereof.

### **21.8 Original Document**

This Agreement is made in three original copies, each having the same contents and the parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

IN WITNESS HEREOF this Agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

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**For and on behalf of the Gujarat Maritime Board**

By Mr

WITNESS:

1. \_\_\_\_\_

2. \_\_\_\_\_

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**For and on behalf of [Licensee]**

By Mr

WITNESS:

1. \_\_\_\_\_

2. \_\_\_\_\_

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**For and on behalf of the Government of Gujarat**

By

WITNESS:

1. \_\_\_\_\_

2. \_\_\_\_\_

The Annexures contain provisions that are relevant to this Agreement and the various detailed Clauses. These will also need to be negotiated with GMB in terms of their relevance, as the case may be, and the content of these Schedules. *PLL would need to comment on the technical aspects and the content of most lists shall have to be valued in respect of their commercial relevance and viability.*

## **22 Annexure 1 - Monitoring At Construction And Operation Stage**

### **22.1 Monitoring of Milestones**

(a) Before the Effective Date, the Contracting Parties will draw up a schedule of activities, which shall be monitored till the issue of Certificate of Completion of Construction. The list of activities may include, wherever relevant and agreed upon, among other activities,

- I. Notified Area Status
- II. Formulation of project team
- III. State level clearances

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- IV. Central Level Clearances
  - V. Single window mechanism for co-ordination with GoG Departments
  - VI. Initiation of tendering procedure for transport linkages
  - VII. Land acquisition for linkages
  - VIII. Provision of construction utilities
  - IX. Progress of transport linkages
  - X. Clearance from Chief Hydrographer/NSPC Clearance
  - XI. Recruitment of key personnel for statutory and commercial functions
  - XII. Construction supervision contract
  - XIII. Construction contract
  - XIV. Contract for supply of equipment
  - XV. Commencement of construction
  - XVI. Phased completion of construction
  - XVII. Phased completion of construction
  - XVIII. Preparation of facilities for Landing and Shipping Place Declaration
  - XIX. Completion of construction
  - XX. Long term user contracts
  - XXI. Provision of permanent utilities
  - XXII. Provision of backup infrastructure
  - XXIII. Start of commercial operations

## **22.2 Process**

- (a) A monitoring chart [PERT/CPM network] for the Project with the agreed milestones shall be drawn up. (Annexure 10)
- (b) For each milestone, the efforts to be made by the Licensee and the Licensor for achieving respective milestones shall be identified
- (c) During the development and construction period, the parties will submit to each other a monthly progress report containing the efforts made by them. Non fulfillment of required efforts and progress will be justified by the responsible party in these reports.
- (d) The other party has the right to ask for further information in the event of delay and/or failure of performance.

## **22.3 Monitoring of provision of Assets, Quality**

### **22.3.1 Applicability of the section**

- (a) This section is applicable to the Contracted Assets.

### **22.3.2 During Construction**

- (a) The agreed specifications for the Contracted Assets at the time of approval will be monitored by the Licensor during the period of construction of such assets.

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- (b) The Licensee shall submit monthly progress reports, and a report on the provision of the quality of created assets on completion of construction.
  - (c) The Licensor reserves the right to inspect the facilities and/or access necessary documents to verify such reports.
  - (d) The Licensor reserves the right to engage independent consultants to monitor the quality of Contracted Assets at his own cost and after adequate notice to the Licensee.

### **22.3.3 During Operations**

- (a) The agreed specifications, maintenance standards and replacement schedules for Contracted Assets shall be monitored by the Licensor.
- (b) The Licensee shall submit its monthly maintenance reports.
- (c) The Licensor reserves the right to verify such reports through inspection of the Leased Premises and/the assets thereon and work practices and/or accessing the relevant documents.

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**23. Annexure 2 - List of Licensor/GOG Actions triggering Licensor Event of Default**

| <b>Action</b>   | <b>Relevant Section</b>                             |
|---|---|
| Withdrawal of applicability of the Indian Ports Act – 1908 from the Port  | 4 of Indian Ports Act - 1908                        |
| Redefining the Port Limits  | 5 of Indian Ports Act - 1908                        |
| Combining the Port with any other port under Section 5 of the Indian Ports Act 1908   | 5 of Indian Ports Act - 1908                        |
| Appointment of a Conservator (other than the Licensee) for the Port   | 7 of Indian Ports Act - 1908                        |
| Adverse alteration of Schedule 1 of The Indian Ports Act by Gazette notification  | 33 of Indian Ports Act – 1908                       |
| Authorisation of a person other than the Licensee to carryout works or perform services at the Port                         | 32 (3) , 35 (1) of Gujarat Maritime Board Act, 1981 |
| Undertaking of any services in accordance with Section 32 of the Gujarat Maritime Board Act by the Licensor within the Port | 32 of Gujarat Maritime Board Act, 1981              |

**24. Annexure 3 - 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

- (a) 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.
- (b) Such independent experts shall have adequate experience in the design, construction, operation and maintenance of port facilities and/or port finances, accounting, costing and valuation practices as the case warrants.
- (c) The two experts will jointly appoint a third expert with similar experience within one week of their appointment.
- (d) 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 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.
- (e) The Expert Committee may call on either party to furnish additional information as deemed necessary to solve the dispute.
- (f) The Expert Committee shall give the majority decision to both parties within three weeks of the receipt of written submission from the contracting parties.
- (g) The decision of the Expert Committee shall be final and binding on the contracting parties unless either of the parties issues an Arbitration Notice.

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- (h) The costs of the engagement of the Expert Committees shall be shared equally by the parties.

**25. Annexure 4- Guidelines for the computation of Book Value/ Depreciated Historical Cost**

- (a) The Depreciated Historical Cost (DHC), wherever applicable, shall be computed based on the following norms: The depreciation shall be calculated on straight line basis. Life span of the assets for the purpose of depreciation shall be as indicated below.

| <b>Asset Category</b>  | <b>SLM Annual Depreciation %</b>   |
|--|--|
| Civil RCC structures   | In accordance with the provisions of the Companies Act 1956, as may be amended from time to time |
| Buildings Operational  | In accordance with the provisions of the Companies Act 1956, as may be amended from time to time |
| Buildings Residential  | In accordance with the provisions of the Companies Act 1956, as may be amended from time to time |
| Fenders attached to the berths and essential moveable assets | In accordance with the provisions of the Companies Act 1956, as may be amended from time to time |
| Cost of Reclaimed Land                                       | Annual amortization %  |

- (c) The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
- (d) Wherever Book Value or Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Licensee, to the satisfaction of the Licensor, with Chartered Accountant's, Public Accountant's and valuer's certificates and duly supported by bills and other documents of manufacturers/ suppliers/civil works contractors, at the time of installation of the new assets or replacement of the assets as the case may be.



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**26. Annexure 5 - List of Construction Standards**

- (a) Waterfront Structures : Recommendations of the Committee of Waterfront structures : EAU 1985 or any later edition
- (b) British Standard Code of Practice for Maritime Structures - BS6349 - all ports
- (c) Permanent International Association of Navigation Congress (PIANC) - Development of Modern Marine Structures - Report of Working Group
- (d) Port Development - A handbook for planners in developing countries - UNCTAD 1976
- (e) PIANC - International Commission for improving the design of Fender Systems

The planning and design of the port facilities shall generally conform to the recommendations contained in the above mentioned publications. The designed construction of the other works shall be done in accordance with the relevant standards of the Bureau of Indian Standards or British Standards.

**27. Annexure 6 - Contracted Assets, Specifications, Costs, Maintenance Standards, Replacement Schedules**

**28. Annexure 7 - List of Facilities as per GMB Act**

**29. Annexure 8 - List of Services as per GMB Act**

**30. Annexure 9 - Cargo Restrictions****31. Annexure 10 - Critical Milestone and project implementation time-table.**

**32. Annexure 11 - Core Assets**

**33. Annexure 12 - List of third parties (to be updated every six months)**

- (a) Sub-concessionaires
- (b) Sub- contractors
- (c) Sub-lessees
- (d) Users with long term contracts

**34. Annexure 13 - Identify Land and minimum land requirement for commencement of construction.**

**35. Annexure 14 – Approved Lay-out Plan**

**36. Annexure 15 - Lease Agreement**

**37. Annexure 16 - Approved Development Plan**

**38. Annexure 17 - Approved DPR**

**39. Annexure 18 - BOOT Policy**

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**40. Annexure 19 - Joint Development agreement.**