

MUMBAI PORT AUTHORITY

DRAFT CONCESSION AGREEMENT

For

Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode.

CONCESSION AGREEMENT

BETWEEN

BOARD OF MUMBAI PORT AUTHORITY

(THE CONCESSIONING AUTHORITY)

AND

…….. LTD.

(THE CONCESSIONAIRE)

"T.No. 77/2026-Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode."

XX/XX/2026

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made and executed at _____ on this _____ day of _____, 2026

BETWEEN:

1. BOARD OF MUMBAI PORT AUTHORITY, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at **Port Bhavan, Ballard Estate, Fort, Mumbai- 400001**, hereinafter referred to as **"the Concessioning Authority"** (which expression shall, unless repugnant to the context or meaning thereof, shall be deemed to mean and include its successors and permitted assigns);

AND

2. ……. LIMITED, a ____ registered under _____, and having its registered office at _____, hereinafter referred to as **"the Concessionaire"** (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns).

The Concessioning Authority and the Concessionaire shall be hereinafter individually referred to as "Party" and collectively as "Parties".

WHEREAS:

(A) The Concessioning Authority is desirous of implementing a Project **"Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode "** for a period of 45 (Forty Five) years, through Public Private Partnership (the "**PPP** ") on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis;

(B) In or about _____2026, the Concessioning Authority invited Bids from the interested parties in accordance with the Request for Proposal documents (as defined hereinafter) together in a single stage, to qualify competent Bidders and select the Highest Bidder from amongst them whom the project will be awarded;

(C) In response to the invitation referred to in recital 'B' above, the Concessioning Authority received bids from various Bidders/Consortiums including the Bid dated _____ submitted by the Bidder/Consortium in accordance with the Request for Proposal documents;

(D) The Concessioning Authority, after evaluating the technical bids received under the single-stage, two-cover Request for Proposal process, declared _____ number of bidders, including the Bidder/Consortium, as qualified, whose financial bids were opened subsequently;

(E) The Concessioning Authority, after evaluating the financial bids of the qualified bidders, accepted the Bid referred to in recital "C" above submitted by the Bidder/Consortium and communicated its acceptance to the Bidder/Consortium vide Letter of Intent for Award of Concession dated _____;

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

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

NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Accounting Year " means 1st April to 31st March of any year.

Actual Gross Revenue" *means, in respect of any Accounting Year, the total Gross Revenue earned or accrued by the Concessionaire during that Accounting Year, whether or not actually realized, computed in accordance with this Agreement and certified by the Statutory Auditor of the Concessionaire.*

For the avoidance of doubt, the revenue shall be recognized on an accrual basis, representing the full value of all consideration receivable by the Concessionaire from its sub-licensees, users, or any other persons, for the services provided or facilities utilized during such Accounting Year, notwithstanding any dispute, non-realization, or delay in payment by such parties. Any subsequent write-offs or bad debts shall not be deducted from the "Actual Gross Revenue" for the purpose of calculating the Authority's revenue share.

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

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

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

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

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

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity

hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and

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

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

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

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

"Affiliate/Associate" means, with respect to any Party and/or with respect to the Bidder and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Bidder and/or member of Consortium.

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

"Agreement" means this agreement as of date hereof, including Appendices 1 through 25as may be amended, supplemented or modified in accordance with the provisions hereof.

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

"Applicable Laws" means all laws, brought into force and effect by Government of India (GoI) or the State Government including rules, regulations and notifications made thereunder, treaties and conventions having the force of law and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement

"Applicable Permits" means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from

any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document

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

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

"MCLR " means the Marginal Cost of fund based Lending Rate (MCLR) rate of interest specified by the State Bank of India from time to time.;

"Berth Occupancy" shall have the meaning ascribed to it in Appendix 13;

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

"**Bidder**" means [●]

"Bid Security" means the e-bank guarantee/ Insurance Surety Bond/ Demand Draft dated [●] furnished by the Bidder/Consortium along with its Bid.

"Block Period" shall have the meaning ascribed to it in Article **7.1(a)(xix) and Appendix 13;**

"Board" means the Board of Mumbai Port Authority

"Car Park" means the car parking facilities forming part of the Project, including the multi-level car park in the Commercial Permitted Facilities, the Reserved Car Park and any open or surface parking within the Project Site;

"Change in Law" shall have the meaning set out under Article 13.1 of this Agreement.

"Change of Scope" shall have the meaning assigned to it under Article 6.8(a).

"Change of Scope Notice" shall have the meaning assigned to it under Article 6.8(b).

"Completion Certificate" shall have the meaning assigned to it under Article 6.3.

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

"Commercial Permitted Facilities" means the Hotel, the Tourism Centre (including the multi-level car park and the commercial floors), restaurants, food and beverage outlets, retail and other revenue-generating facilities described in Section 4 of Part A of Appendix 4, which are permitted to be developed to cross-subsidise the Mandatory Obligations and which do not form part of the Mandatory Obligations;

"Concession" means the Concession granted by the Concessioning Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

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

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

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

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

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

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

"Construction Phase" means the period from the Date of Award of Concession till the Commercial Operations Date.

"Construction Works" means all works, equipment and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Agreement.

"Construction Standards" means the construction standards set out in the annexure to Appendix 4.

"Consultation Notice" has the meaning ascribed to it in Article 15.3.

"Contractor" means a Person[1] with whom the Concessionaire has entered into/may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services.

"Core Marina Assets" means the Marina Basin together with all berths, pontoons, gangways and berth-side services, the Marina Terminal Building, the Stack Parking (Dry Stack) facility, the Sailing School and the Shipyard / Repair Yard at Haji Bunder;

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

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

[1] If requested by the Concessionaire, to facilitate custom duty exemptions available to the contractors for certain projects, the names of the persons engaged as Contractors may be specified.

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

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

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

(a) the principal amount of the debt including any subordinated debt provided by the Senior Lenders under the Financing Documents for financing the Total Project Cost ("the Principal") but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment two years prior to the Transfer Date; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioning Authority; and

(b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above upto the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Concessioning Authority Default;

Provided further that the Debt Due, on or after COD, shall in no case exceed 85% of the Total Project Cost.

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

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

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

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Port's Assets/Project Facilities and Services.

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

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

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

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

"Escrow Agreement" means the agreement to be executed inter alia between the Concessionaire, the Concessioning Authority and the Senior Lenders/Senior Lenders representative substantially in the format set out in Appendix 15 hereto.

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

"Event of Default" shall have the meaning assigned to it under Article 15.1.

"Exclusivity Period" shall have the meaning ascribed to it in Article 12.2(c).

"Financial Assistance" means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

"Financial Close" means the date on which the Financing Documents providing for Financial Assistance by the Senior Lenders, Equity Documents and the documents in respect of debt, if any, committed by the Bidder/Consortium have become effective and the Concessionaire has access to such Financial Assistance.

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

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

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

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

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

"GoI" means the Government of India.

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

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

"Gross Revenue" means all pre-Tax revenue earned by the Concessionaire under or pursuant to this Agreement, at any time from the date of execution of this Agreement up to the Transfer Date, and shall include any monies received from sub-licensees and other persons by the Concessionaire as deposits (refundable or otherwise), but shall **exclude** the following:

(a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, where the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently, of such assets;
(b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and
(c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Accounting Year, provided these pertain to past deposits on which Royalty has been paid to the Authority.
It is expressly clarified that:
(i) insurance proceeds referred to in exclusion (a) above shall **not** include any exclusion of insurance proceeds received for loss of revenues and/or business interruption [i.e., loss-of-revenue/business-interruption proceeds are NOT excluded — they count as Gross Revenue];
(ii) monies referred to in exclusion (b) above shall be excluded **only if** the same has been or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently; and any fine, penalty or other amounts of similar nature that may accrue as a

result of non-payment or delayed payment of such monies under the Applicable Laws will **not** be excluded;

(iii) Gross Revenue will be computed on an annual basis for an Accounting Year, in accordance with Indian Generally Accepted Accounting Principles (Indian GAAP) as applicable on March 31, 2016, as amended from time to time.

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

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

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

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

"International Marina Standards" means the standards, guidelines, codes of practice and technical specifications applicable to the design, construction, operation, safety and environmental management of marina facilities as recognized and published by leading international marina industry bodies, including but not limited to The Yacht Harbour Association (TYHA), the Marina Industries Association (MIA), the International Council of Marine Industry Associations (ICOMIA), and the British Marina Federation (BMF), or such other equivalent international standards as may be approved in writing by the Authority from time to time. Where any conflict exists between such international standards, the standard providing the higher level of safety, environmental protection or operational quality shall prevail, unless the Authority directs otherwise in writing

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

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

"Mandatory Obligations" shall mean the facilities and services listed in Section 1 of Part A of Appendix 4, which the Concessionaire must develop, operate and maintain for the entire Concession Period without exception.

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

Master Plan means the comprehensive land-side development plan the Concessionaire must submit to the SPA as part of Condition Precedent.

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

"Minimum Guaranteed Berth Occupancy" or "MGBO" shall have the meaning ascribed to it in Article 7.1(a)(xix) and Appendix 13;

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

Net Built-Up Area (BUA) shall mean permissible built up area (70,180.04 sq.m) after allowing standard deductible area.

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

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

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

"Operations Phase" means the period from the COD to the expiry/termination of the Concession Period.

"Operating Year" means each successive period of 12 (twelve) months commencing from COD;

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

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

"Party" means either the Concessioning Authority or the Concessionaire as the context may require or admit and **"Parties"** means both Concessioning Authority and Concessionaire.

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

"Performance Guarantee" shall mean the e- bank guarantee(s)/ insurance surety bond / letter(s) of credit procured by the Concessionaire for the benefit of the Concessioning Authority guaranteeing the performance of the obligations of the Concessionaire hereunder in the manner specified in Article 4.1.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

"Political Event" means the Force Majeure Events set out in Article 14.3.

"Port's Assets" means the assets set out in Appendix 2, belonging to the Concessioning Authority.

"Port Limits" means limits described in the Port Limits notification for the Port Authority as amended, supplemented or replaced from time to time.

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

"Price Index" shall comprise:
(a) 70% of WPI; and
(b) 30% of CPI (IW),
which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

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

"Project Assets" means all physical and other assets relating to and forming part of the Site including:
(a) rights over the Site in the form of licence, Right of Way or otherwise;
(b) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems and administrative offices;
(c) Project Facilities and Services situated on the Site;
(d) all rights of the Concessionaire under the Project Contracts;
(e) financial assets, such as receivables, security deposits etc.;
(f) insurance proceeds; and
(g) Applicable Permits and authorisations relating to or in respect of the Project;

"Project Capacity" means the capacity of the Project Facilities and Services of 604 (six hundred and four) yacht berths of various sizes, comprising (a) Phase I of 424 (four hundred and twenty-four) yacht berths to be constructed by the Authority in terms of Part B of Appendix 4; and (b) Expansion Phase, comprising the balance berths to be developed by the Concessionaire at its own cost within the Marina water area forming part of the Project Site, in accordance with Article 7.1(a)(xviii). It is clarified that the design capacity of 604 (six hundred and four) berths as per the layout prepared by IIT Madras is capable of being increased to 696 (six hundred and ninety-six) berths by re-arrangement of the floating pontoons within the Marina water area, as per the TA, and the Concessionaire may, with the approval of the Authority, provide such higher number of berths as may be accommodated within the Marina water area in accordance with its business plan and the Applicable Permits.

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

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

"Project Schedule" means the Appendix 5 hereto.

"Project Site" means the area demarcated in Appendix 1 including the waterfront, existing berth, land together with buildings, structures if any and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Agreement. This shall also include additional land, utilities and services allowed by Port in terms of Article 7.1 (c)(iii), wherever applicable.

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

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

"Quarter" means a period of 3 (three) Months.

"Quoted Revenue Share Percentage" means the single fixed percentage (upto 3 decimals) of Gross Revenue quoted by the Concessionaire in its Bid and applicable uniformly to every Accounting Year of the Concession Period for computation of the Revenue Share, as set forth in Article 9 of this Agreement;

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

"Request for Proposal" or **"RFP"** means the Request for Proposal dated [●] issued by the Concessioning Authority to the bidders and includes any addendum / clarifications issued in respect thereof by the Concessioning Authority.

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

"Royalty" means the revenue share payable by the Concessionaire to the Concessioning Authority, pursuant to Article 9 hereof.

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

"Scale of Rates" means the scale of rates along with the statement of conditions with respect thereto framed and notified by competent authority under the provisions of MPA Act, 2021 as applicable. This also includes the Scale of Rates for Land published by Mumbai Port Authority, from time to time.

"Scheduled Project Completion Date" means the date of completion of 36 months from the Date of Award of Concession.

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

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

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

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

"Specified Assets" means such of the Project Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but no later than the 35th (Thirty Fifth) anniversary of the Date of Award of Concession; provided that Specified Assets shall not include assets that are part of Scope of Work mentioned in Appendix 4 of Concession Agreement and any improvement on existing assets; provided further that any Specified Assets shall be constructed, acquired or installed by the Concessionaire only with the prior approval of Concessioning Authority.

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

"Sub-Concession Agreement" means any agreement, sub-licence, sub-lease, sub-concession, letting or other arrangement by which the Concessionaire grants to any Person (a "Sub-Concessionaire") the right to use, occupy or operate any part of the Project Site, the Project Facilities and Services or the Project Assets, including any part of the Commercial Permitted Facilities;

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

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

"Tariff" means the applicable rate(s) that may be charged by the Concessionaire for and in respect of providing the Project Facilities and Services, which is also referred to as "User Charge" under Article 8

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

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

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

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

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

"The Port" means Mumbai Port.

"Total Project Cost" means the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

a) the capital cost of the Project, as set forth in the Financial Package at the date of Financial Close;
b) the actual capital cost of the project upon completion approved by Independent Engineer and Statutory Auditor and submitted to Concessioning Authority at the time of issuing Completion Certificate;
c) a sum of Rs. 922 Crore (Rupees Nine Hundred and Twenty Two Crore).

Provided further that in the event of termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index occurring in respect of Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement

"Transfer" means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire.

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

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

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

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

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Other References

In this Agreement:

"BIS" means Bureau of Indian Standards.

"BS" means British Standard.

"CD" means Chart Datum.

"CISF" means Central Industrial Security Force.

"COD" means Commercial Operations Date.

"DIN" means German Industrial Standard.

"FEM" means Federation of Equipment Manufacturers.

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

"IS" means Indian Standard.

"ISO" means International Standards Organization.

"IEC" means International Electro Technical Commission.

"IMDG" means International Maritime Dangerous Goods.

"IMO" means International Maritime Organization.

"km" means Kilometre, the unit of length.

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

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

"m" means Metre, the unit of length.

"mm" means Millimetre, the unit of length.

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

"**MTPA**" means Million Metric Tonnes per Annum.

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

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

"OISD" means Oil Industry Safety Directorate.

"TPH" means Metric Tonnes per hour.

1.3 Interpretations

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

In this Agreement unless the context otherwise requires:

(a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into here under;
(b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
(c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;

(d) the words "include" and "including" are to be construed without limitation;
(e) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
(f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
(g) any reference to day shall mean a reference to a calendar day;
(h) any reference to month shall mean a reference to a calendar month;
(i) "Recital", "Article" and "Appendix" shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
(j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
(k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
(l) unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
(m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement;
(n) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;
(o) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
(p) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof , shall not apply; and
(q) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.4 Measurements and Arithmetic Conventions

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

1.5 Ambiguities and Discrepancies

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

(a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

(b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;

(c) between any value written in numerals and that in words, the latter shall prevail; and

(d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

ARTICLE 2

2 CONCESSION AND PORT ASSETS

2.1 Concession

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

2.2 Concession Period

The Concession hereby granted is for a period of 45 (Forty Five) years commencing from Date of Award of Concession during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services as per Scope of work in accordance with the provisions hereof.

Provided that: -

(a) in the event of the Concession being extended by the Concessioning Authority beyond the said period of 45 (Forty Five) years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and

(b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Date of Award of Concession and ending with the date of termination/ determination of the Concession/this Agreement.

(c) Provided in the event of any delay attributable solely to the Concessioning Authority in handing over possession of the Marina which Concessioning Authority is obligated to construct as provided under Appendix 4 Part B — Scope of Work of the Authority of this Agreement and as per project schedule specified in Appendix 5, the concession period shall get extended by that period of delay in handing over the Concessioning Authority's Assets by Concessioning Authority. There shall be no other liability on the concessioning authority on this account.

(d) Provided further that, the Concessionaire shall, at any time not earlier than 40th (Fortieth) anniversary of the Award of Concession and no later than 43rd (Forty Third) anniversary of the Award of Concession, intimate the Concessioning Authority about its interest and request for renewing/ extending the term of this Concession by another period of 30 years. While making such request, the Concessionaire shall submit a confirmation that it is agreeable to participate in the international competitive bidding process for the determination of the Royalty for an additional period of 30 years, in the form and manner, as may be prescribed by the Concessioning Authority, at such time, and in any such case of international competitive bidding:

   i. (i) the Concessionaire shall have a right to match the highest bid, if its bid is within 10.00% of the highest bid that may be offered at that time in accordance with the terms

and conditions of the bidding documents issued at such time;

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

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

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

2.3 Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project and to provide Project Facilities and Services in accordance with the provisions of this Agreement. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Concessionaire shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, conceptualize, design, engineer, finance, construct, equip, operate, maintain and replace the Project/ Project Facilities and Services.

2.4 Port's Assets

(a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessioning Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Port's Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.

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

2.5 Use of Port's Assets

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

2.6 Information about Project Site and Port's Assets

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

2.7 Acceptance of the Port Assets

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

(a) inspected the Project Site/Port's Assets, including the berths and all structures thereat and its surroundings;

(b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site/Port's Assets, the nature of the ground and subsoil, the form and nature of the Project Site/Port's Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and

(c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

2.8 Peaceful Occupation

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

ARTICLE 3

3 CONDITIONS PRECEDENT

3.1 Conditions Precedent

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

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

(i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;

(ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;

(iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

(iv) Opening the Escrow Account and executing the Escrow Agreement;

(v) Deleted

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

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

(viii) Procuring and furnishing the following confirmations, in original, from the Bidder/ members of Consortium:

a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;

b) it/they has/have the financial standing and resources to fund / raise finances for undertaking and implementing the Project in accordance with this Agreement;

c) the Bidder is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(ix) Furnishing to the Concessioning Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof; and

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

(xi) Executed and procured execution of the Substitution Agreement

(xii) Submission of masterplan for onshore development

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

(i) procurement of the clearances required for the Project, as set out in Appendix- 8; provided that in case any modification/alteration/deviation to the existing environmental clearance is necessitated owing to Concessionaire's requirements, the same shall be obtained by the Concessionaire as amendment at their own cost.

(ii) handing over physical possession of Land Parcels and the Port's Assets being handed over in accordance with the Phased Handover Schedule in Appendix 1, after procurement of the required clearances as per Article 3.1(b)(i) above and receipt of performance guarantee/security from the Concessionaire with the provision that License Fee, GST etc. shall be paid by Concessionaire from the date of handing over.

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

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

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

3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Performance Guarantee and has not waived or extended the time under Article 3.3 above, and if the Concessioning Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioning Authority), the Concessioning Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment

of the Conditions Precedent subject to a maximum of 5% of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioning Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 3.6 below;

3.5 If the Concessioning Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Article 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfillment of the Conditions Precedent subject to a maximum of 5% of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 3.6 below;

3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 4

4 PERFORMANCE GUARANTEE

4.1 Performance Guarantee

The Concessionaire shall for due performance of its obligations during the Construction Phase provide to Concessioning Authority an unconditional and irrevocable e-bank guarantee/ insurance surety bond, in favor of the Concessioning Authority encashable and enforceable at Mumbai substantially in the form set forth in Appendix 9A/9B or an irrevocable revolving letter of credit in the form acceptable to the Concessioning Authority (the **"Performance Guarantee"**).

The Performance Guarantee shall be for a sum of Rs. 46 Crore (Rupees Forty Six Crore) only. Till such time the Concessionaire provides to Concessioning Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a e-bank guarantee/ insurance surety bond shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessioning Authority. This shall be done within 30 (thirty) Days of any such part encashment. The Performance Guarantee, if in the form of a letter of credit shall be irrevocable and replenished from time to time such that an amount of Rs. 46 Crore (Rupees Forty Six Crore) only is available in immediate encashment to the Concessioning Authority for the entire period of the Construction Phase. The Performance Guarantee furnished under this provision shall be valid until expiry of 6 (six) months from the COD. Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioning Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.

4.2 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security 6 (six) months from the COD, a substitute Performance Security for a like amount shall be deemed to be created as if it is a Performance Security for and in respect of the entire Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 9.5.1, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Concessioning Authority, and the Concessioning Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Article 4.3. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential damages that may fall due at a subsequent date, and only the amounts which shall have become due and

payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

4.3 Appropriation of Deemed Performance Security

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

4.4 References to Performance Security

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

ARTICLE 5

5 INDEPENDENT ENGINEER

5.1 Independent Engineer

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

(b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to the date of expiry of 6 (six) months from the COD. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7. On expiry or termination of the aforesaid appointment, the Concessioning Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Appendix 7, and such procedure shall be repeated after expiry of each appointment.

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

(d) If the Concessioning Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessioning Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.

(e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.

(f) In the event that the Concessioning Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Concessioning Authority may, in the interim, designate and authorise any person for a maximum duration of 90 days to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Article 5.1 (f) shall in any manner restrict the rights of the Concessioning Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 6

6 PROJECT IMPLEMENTATION

6.1 Preparation of Designs and Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Scope of Work.

6.2 Review of the Designs and Drawings

(a) The Concessionaire shall submit the Designs and Drawings as per the Master Plan and as set out in Appendix 6 for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.

(b) The Independent Engineer shall review the Designs and Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the same including the comments/observations of the Concessioning Authority in respect thereof within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

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

(d) If the Independent Engineer/ Concessioning Authority does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer/ Concessioning Authority has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall been titled to proceed with the Project accordingly.

(e) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioning Authority at its sole discretion may suitably extend the Construction Phase or provide other relief (excluding any liquidated damages or financial compensation paid by the Concessioning Authority to the Concessionaire) to compensate for any such delay not attributable to the Concessionaire.

(f) The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer/ Concessioning Authority under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer/ Concessioning Authority.

(g) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

(h) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Concessioning Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in

its editable digital format or in such other medium and manner as may be acceptable to the Concessioning Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

6.3 Construction Phase

(a) The Concessionaire shall promptly commence and complete the works, including installation of equipment in accordance with the Project Schedule and shall also obtain from the Independent Engineer a certificate as to completion of construction of mandatory obligations under Project Facilities and Services in accordance with the provisions of this Agreement (**"Completion Certificate"**) not later than 36 months from the date of commencement of the Concession Period.

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

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

For avoidance of doubt, it is further clarified that the concessionaire shall have the option to commence the operations such as berthing at Marina area and repair/ maintenance at Boat yard Hajibunder prior to COD. Any other operations shall also be allowed subject to certification of technical readiness by the Independent Engineer and the approval of the Concessioning Authority granted on the basis of such certification. Revenues earned from such operations shall form the part of Gross Revenue and Payment of Royalty thereof, as per Article 9.

(d) In the event the Authority's works under Part B of Appendix 4 (including the breakwater and the berthing facility for 424 yachts) are not completed and handed over by the date specified in Appendix 5 for reasons not attributable to the Concessionaire, (i) the Scheduled Project Completion Date and the Milestone Dates shall stand extended to the extent the Concessionaire's works are affected by such delay, as determined by the Independent Engineer, and no liquidated damages under Article 6.9 shall be levied for such period; (ii) the Concession Period shall stand extended in accordance with Article 2.2(c); and (iii) the Concessionaire may, with the approval of the Concessioning Authority under Article 6.3(c), commence operation of such Project Facilities and Services as have been completed by it (including the Shipyard and Repair Yard at Haji Bunder, the Dry Stack and the landside facilities), and the revenues therefrom shall form part of Gross Revenue. Save as aforesaid, the Concessioning Authority shall have no other liability on this account.

(e) The Concessionaire may undertake construction of the Commercial Permitted Facilities concurrently with the Mandatory Obligations provided that no Occupancy Certificate shall be issued by the Authority for, and no part of, any Commercial Permitted Facility (including the Hotel and the commercial floors of the Tourism Centre) shall be occupied, sub-licensed or put to commercial use, unless and until (i) all the Mandatory Obligation facilities (other than the expansion of berthing capacity under Article 7.1(a)(xviii)) have been completed and certified by the Independent Engineer; and (ii) the Marina has been declared ready for operation under Article 6.5(c).

6.4 Obligations of the Concessionaire

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

(a) arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.

(b) engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;

(c) give written notice to the Concessioning Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessioning Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioning Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioning Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioning Authority will not be enforceable against the Concessioning Authority;

(d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;

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

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

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

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

(i) The layout of the floating pontoons forming part of the Authority's works under Part B of Appendix 4 shall be finalised by the Authority in consultation with the Concessionaire in accordance with the Concessionaire's business plan, and any change in such layout requested by the Concessionaire within the scope of the Authority's EPC contract shall be carried out by the Authority at its cost.

(j) Any other change, addition or modification requested by the Concessionaire during the execution of the Authority's works which is not within the scope of work of the Authority's EPC contract shall be carried out only with the approval of the Authority, and the entire additional cost thereof shall be borne by the Concessionaire. The scope of work of the Authority's EPC contract has been made available to the Concessionaire along with the RFP.

6.5 Obligations of the Concessioning Authority

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

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

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

(c) upon satisfaction as to completion and receipt of Provisional Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 26 of the MPA Act.

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

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

(f) Complete the construction of Project Facilities and Services as per the scope of work prescribed in Appendix 4 of this agreement and the time period specified in Appendix 5

6.6 Suspension of Works

(a) Upon recommendation of the Independent Engineer to this effect, the Concessioning Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessioning Authority, such work threatens the safety of the Users or any other person on or about the Project. Provided, however, that in case of an Emergency, the Concessioning Authority may suo moto issue the notice referred to hereinabove.

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

(c) Subject to the provisions of Article 14.9, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessioning Authority, the Preservation Costs shall be borne by the Concessioning Authority.

(d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the project completion schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority accordingly whereupon the Concessioning Authority shall extend such project completion schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Project Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of

extension of the Scheduled Project Completion Date.

6.7 Issue of Completion Certificate

(a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The Independent Engineer shall then proceed to inspect the Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the tests as are specified in Appendix 7 that it shall carry out to ensure that the Project meets with the Construction Standards (**"the Tests"**). The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Concessioning Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days' notice to the Independent Engineer;

(b) All Tests shall be conducted in accordance with Appendix 7 at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with specifications and standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the specifications and standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioning Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or caused to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with specifications and standards.

(c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioning Authority a Completion Certificate substantially in the form set forth in Appendix 10;

(d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the **"Provisional Certificate"**) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **"Punch List"**) to be completed by the Concessionaire within a stipulated time. Upon completion of all Punch List items, the Independent Engineer shall conduct tests, if required and issue the Completion

Certificate. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate, failing which the Provisional Certificate shall lose its validity and the Concessioning Authority shall be entitled to terminate this Agreement;

(e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessioning Authority, the Concessioning Authority may, in its discretion, reduce the scope of Project and the Total Project Cost will be reduced to the same extent. Upon such reduction of Total Project Cost, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

6.8 Change of Scope

(a) The Concessioning Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement ("**Change of Scope**"). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed on the Scheduled Project Completion Date. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% of the Total Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% of the Total Project Cost ;

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

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

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

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

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

a Change of Scope and/or the cost of implementing the same, they may seek intervention of the Independent Engineer to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioning Authority may issue an order to implement the Change of Scope;

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

(f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioning Authority shall make an advance payment to the Concessionaire of a sum equal to 20% of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioning Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioning Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioning Authority shall disburse to the Concessionaire after deducting pro-rata advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipment following an order for a Change of Scope;

(g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioning Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% of the bid amount to the Concessioning Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% thereof; It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Concessioning Authority acknowledges and agrees that it shall not undertake any works or services under this Article 6.8(g) if such works or services cause a Material Adverse Effect on the Concessionaire.

(h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and/or improved Project Facilities and Services, it shall by notice in writing request the Concessioning Authority to consider such Change of Scope. The Concessioning Authority shall respond within 45 (forty-five) days of receipt of such notice, either accepting such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioning Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis

mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8(f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement and delays for reasons not solely attributable to the Concessioning Authority, the Concessionaire shall pay to the Concessioning Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Scheduled Project Completion Date.

Provided such liquidated damages shall not in aggregate exceed 5% of the Total Project Cost.

Unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, Liquidated Damages shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation.

Provided further that in the event COD is achieved on or before the Scheduled Project Completion Date, the damages paid under this Article 6.9 shall be refunded by the Concessioning Authority to the Concessionaire, but without any interest thereon.

The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioning Authority is likely to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% of the Total Project Cost, the Concessioning Authority shall be entitled to terminate this Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioning Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee.

ARTICLE 7

7 OPERATIONS & MAINTENANCE

7.1 (a) Obligations of the Concessionaire

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

(i) ***Marina Operations:***

The Concessionaire shall:

(a) promptly commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;
(b) make efforts to maximise utilization of yacht berthing so as to achieve optimal utilization of the Project Facilities and Services;
(c) ensure compliance of the Project Facilities and Services at least as per the Scope of Work.;
(d) be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project assets during the concession period;
(e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;
(f) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;
(g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
(h) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;
(i) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour.
(j) ensuring to provide Marina services and such other services as required as per terms of this Agreement and Good Industry Practices; and
(k) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(l) Subject to the Applicable Permits, the Concessionaire shall operate and manage the Marina on a common user basis and provide non-discriminatory access to all yachts, public, club members and

other persons in accordance with the provision of this Agreement and shall refrain from adopting any unfair or discriminatory practices against any User or potential user thereof.

(m) Access to Sailing School and providing training as per the approved SOPs, which shall be provided by the Authority.

(ii) ***Repairs and Maintenance***

The Concessionaire shall at its own cost:

(a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Scope of Work and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services including resurveying of pavement, repair structures and repair and refurbish equipment; and

(b) maintain the Project Facilities and Services in accordance with the provisions of this Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessioning Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iii) ***Replacement of Equipment / Floating pontoon***

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Scope of Work, at all times during the Concession Period. This also includes the marina assets handed over to the Concessionaire by the Authority.

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

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

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

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

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

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

(vii) ***Access for Inspection***

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

(viii) ***Reports***

The Concessionaire shall provide to the Concessioning Authority, Monthly reports on Yacht traffic, berthing days, car parking, number of vessel/boats/yachts repaired, bunker supplied, electricity supplies and all other services provided as per Project Facilities and Services, Tariff earned and collected in respect of Project Facilities and Services and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioning Authority may require from time to time. If so desired by the Concessioning Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioning Authority and its representatives.

(ix) ***Computer System and Network***

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

(x) ***Security Arrangements***

The Concessionaire may make his own arrangements for security in the Project Site/Port Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioning Authority or a Government Authority from time to time. It shall also conform to and assist the Concessioning Authority or any authority responsible therefor in conforming to the International Ship and Port facility Security Code ("**ISPS Code**") and such other codes/requirements of International Maritime Organization as may be applicable to India from time to time. In case the Government Authority directs to deploy CISF under ISPS, the cost towards such deployment shall also be borne by the Concessionaire.

(xi) ***Employment of Personnel***

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the

Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire from the Competent Authority (ies) prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility.

(xii) ***Deleted***

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

Notwithstanding anything contained in the MPA Act or any other law for the time being in force, the Concessionaire shall be responsible for meeting any claim, action, suit or proceeding (the **"Action"**) by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Concessionaire and indemnify, save and hold harmless the Concessioning Authority, its officers, employees, agents and representatives (the **"Indemnitees"**) against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Concessionaire expeditiously and in any case within 30 Days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Concessionaire. If the Concessionaire acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Concessionaire shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Concessionaire. In such case the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

(xiv) ***Maintenance of Complaint Portal***

(a) The Concessionaire shall maintain a "Complaint Portal" on its website which shall be available to all users of the Project Facilities and Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Concessioning Authority website with an alert system for real time access to the complaints.

(b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Authority and maintain a proof of reply.

(c) If Concessionaire fails to address the grievance and the complaint makes a reference to Concessioning Authority, it will issue directions which shall be complied by the Concessionaire.

(xv) ***Maintenance of website portal***

The Concessionaire shall maintain online website portal exclusively for the Marina and its Associated Facilities where the real-time information and services of Marina and Associated Facilities, berth availability, services available, events schedule, events reservations, photo gallery, moorage options and reservation facilities are available. The Portal shall provide to the users with online booking facility of slips (parking slots for yachts), rooms, events, conferences or any services and facilities provided by the Concessionaire including information of availability, standard rates, special discounts, group discounts, happy hour discounts or dynamic pricing of all the services available including Indoor Events or Outdoor Events relating to Marina. The Tariff, berth availability and booking information on the Portal shall be kept current in accordance with Article 8.1(d).

(xvi) ***Facilities for differently abled and elderly persons***

The Concessionaire shall, in conformity with the regulations and guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for the elderly persons using the Marina.

(xvii) ***Obligation relating to Project Agreements***

(a) It is expressly agreed that the Concessionaire shall, at all times during the Concession Period, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreements or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

(b) The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

(c) The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial

liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

(d) The Concessionaire shall ensure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension ("Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

(e) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

(xviii) ***Sub-Concessions, Sub-licensing and Sub-letting***

(a) The Concessionaire shall not execute any Sub-Concession Agreement, or any amendment, renewal or assignment thereof, in respect of any part of the Project Site, the Project Facilities and Services or the Project Assets, except with the prior written approval of the Concessioning Authority. The Concessionaire shall submit to the Concessioning Authority the draft of each proposed Sub-Concession Agreement together with the identity and credentials of the proposed Sub-Concessionaire, the area, the permitted use, the tenure and the consideration (including any

premium, deposit or advance). No Sub-Concession Agreement shall be deemed to have been approved by reason only of the lapse of time.

(b) The Core Marina Assets shall be operated and maintained by the Concessionaire itself, or through the O&M Contractor approved under Article 7.1(a)(xvii)(e), and shall not be sub-licensed, sub-let or given on sub-concession to any Person; provided that the Concessioning Authority may, under (a) above, approve arrangements with marine trade contractors, chandlers and other service providers for ancillary services within the Core Marina Assets, without derogating from the operational responsibility of the Concessionaire.

(c) The tenure of any Sub-Concession Agreement shall not extend beyond the Concession Period, save as provided in Article 23.7. Every Sub-Concession Agreement shall contain the Covenant referred to in Article 7.1(a)(xvi)(d) and shall require the Sub-Concessionaire to use the premises only for the use approved under this Agreement.

(d) The Concessionaire shall remain solely responsible to the Concessioning Authority for the performance of all its obligations under this Agreement, including the completion, operation and maintenance of the Project, notwithstanding any Sub-Concession Agreement. The consideration receivable under every Sub-Concession Agreement shall form part of Gross Revenue in accordance with Article 9.2A.

(xix) ***Expansion of Yacht Berthing Capacity***

(a) The Concessionaire shall, at its own cost, expand the yacht berthing capacity of the Marina beyond Phase I (424 berths) by developing the Expansion Phase within the Marina water area forming part of the Project Site, up to the full Project Capacity, upon the earlier of (i) the average annual Berth Occupancy of the Phase I berths reaching 70% (seventy per cent) for 2 (two) consecutive Operating Years; and (ii) the commencement of the 15th (fifteenth) Operating Year (the "Expansion Trigger Date"). The Concessionaire may, with the approval of the Authority, undertake such expansion earlier than the Expansion Trigger Date.

(b) Within 6 (six) months of the Expansion Trigger Date, the Concessionaire shall submit its expansion plan and the Designs and Drawings thereof to the Authority and the Independent Engineer, and shall complete the expansion within [24 (twenty-four)] months of the Expansion Trigger Date or such extended period as the Authority may allow. The provisions of Article 6 shall apply mutatis mutandis to the expansion works, and any amendment to the Environmental Clearance or CRZ clearance required therefor shall be obtained by the Concessionaire at its own cost.

(c) If the Concessionaire fails to complete the expansion within the period specified in (b) above, the Concessioning Authority may, without prejudice to its other rights under this Agreement, by notice of 90 (ninety) days, either itself undertake the balance expansion or grant a licence to another agency for the same within the Marina water area, whereupon the water area and the berths so developed shall stand excluded from the Project Site and the Concession without any

compensation to the Concessionaire, and the Concessionaire shall provide all access, interface and co-operation reasonably required for the purpose.

(xx) ***Minimum Guaranteed Berth Occupancy***

(a) The Concessionaire shall actively market the Marina and attract privately owned leisure yachts throughout the Concession Period, and shall achieve in each Operating Year the minimum Berth Occupancy specified in Appendix 13 (the "Minimum Guaranteed Berth Occupancy" or "MGBO"). Compliance with the MGBO shall be assessed over rolling periods of 7 (seven) consecutive Operating Years (each a "Block Period"), within each of which the Concessionaire shall achieve the MGBO in at least 5 (five) Operating Years, in the manner set out in Appendix 13.

(b) Berth Occupancy shall be computed on an annual basis in the manner set out in Appendix 13. The Concessionaire shall maintain, and produce to the Authority as and when demanded, all berthing contracts, agreements, invoices and records in support thereof.

(c) If, in any Block Period, the Concessionaire fails to achieve the MGBO in at least 5 (five) Operating Years, the same shall constitute a Concessionaire Event of Default.

(d) No shortfall shall be reckoned for any period during which the Marina or any part thereof is unavailable on account of a Force Majeure Event, a Concessioning Authority Event of Default, or any closure directed by the Authority or a Government Authority for reasons not attributable to the Concessionaire, and the berth-days so affected shall be excluded from the Berth Days Available.

(xxi) ***Marina Accreditation***

(a) The Concessionaire shall obtain accreditation of not less than 4 (four) Gold Anchors under the Global Gold Anchor Scheme of The Yacht Harbour Association / Marina Industries Association, or an equivalent accreditation approved by the Authority, within 24 (twenty-four) months of COD, and shall maintain such accreditation without lapse throughout the remaining Concession Period, while pursuing the higher accreditation targets set out in Appendix 14.

(b) If minimum accreditation is not obtained within the stipulated time, or is downgraded below 4 (four) Gold Anchors or is withdrawn at any point of time during the Operation Period, the Concessionaire shall (i) notify the Authority within 7 (seven) days; (ii) submit, within 30 (thirty) days, a corrective action plan with a time-bound programme to regain the accreditation, and report progress in its monthly Compliance Report; and (iii) pay liquidated damages for the period of default in accordance with Schedule III of Appendix 14.

(c) If the accreditation is not regained within 12 (twelve) months of such default, or if such default recurs, it shall constitute a Material Breach and a Concessionaire Event of Default.

(xxii) ***Primacy of Marina Operations and Land Use***

(a) The Concessionaire acknowledges that the Project is a marina project and that the Commercial Permitted Facilities are permitted solely to cross-subsidise the Mandatory Obligations. The Concessionaire shall at all times accord priority to the development, operation and maintenance of

the Mandatory Obligations, and no performance or non-performance of the Commercial Permitted Facilities shall excuse any shortfall in the Mandatory Obligations.

(b) Each Land Parcel forming part of the Project Site shall be used only for the purposes specified for it in Appendix 1, Appendix 4 and the approved Master Plan. No residential use shall be permitted anywhere in the Project Site, and no change in the use of any land, building or floor space from that specified in the approved Master Plan shall be made without the prior written approval of the Authority.

7.1 (b) Rights of Concessionaire

(i) ***Refinancing***

Upon request made by the Concessionaire to this effect, the Concessioning Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the Reserve Bank of India and other competent authority as applicable, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior written consent of the Concessioning Authority, which consent shall not be unreasonably withheld.

For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

(ii) ***Preferential and Priority Berthing***

Deleted

(iii) ***Deleted***

7.1 (c) Obligations of the Concessioning Authority

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

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

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

(a) if applicable scheduling the berthing and sailing of the vessels as determined by the Deputy Conservator of the Port depending on individual ship characteristics and tidal conditions;

(b) maintenance of the entrance channel (P&V channel) draft upto 6 m provided this draft may be increased in future based on mutual agreement between the Concessioning Authority and Concessionaire on cost sharing and any other aspects subject to such cost sharing; It is to state that the maintenance dredging is carried out once a year between Oct. and March.

(c) waterside safety and safety of navigation;
(d) deleted;
(e) deleted;
(f) provision and maintenance of access road to the project site.
(g) Deleted;
(h) assist the Concessionaire in securing the assistance of CISF or the relevant Government Authority as may be necessary to prosecute any persons for any offence committed by them within the Project Site.

(ii) ***Approval***

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

(iii) ***Additional Land, Utilities and facilities***

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the Scope of Work at any time during the concession period, the Concessionaire may approach the Concessioning Authority for providing additional land, utilities and facilities. Concessioning Authority on being approached by Concessionaire with due justification of the additional land, utilities, facilities requirement as applicable shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per Scope of Work in terms of Article 9.3. Even if authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient for providing services as per Scope of Work.

(iv) ***Reference to Adjudicatory Board***

In the event of Project becoming a Stressed project, Concessioning Authority may make a reference to Adjudicatory Board, as per Article 19.4 of this Agreement, for appraisal and review of the Project to suggest measures to revive the Project.

7.1(d) Rights of Concessioning Authority

(i) If, in the reasonable opinion of the Concessioning Authority, the Concessionaire is in material breach of its obligations under this Agreement for providing services as per Project Facilities and Services, the Concessioning Authority may, without prejudice to any of its rights under this Agreement including termination thereof, by notice require the Concessionaire to take reasonable measures for providing services as per the Project Facilities and Services
(ii) In the event that the Concessionaire, upon notice as per 7.1(d)(i) above fails to provide services as per Project Facilities and Services at the Project as per Agreement within the period prescribed in the notice, the Concessioning Authority may take over the performance of any or all the

obligations of the Concessionaire to the extent deemed necessary by it for providing services as per Project Facilities and Services at the Project, at the risk and cost of the Concessionaire and to recover any costs and expenses incurred by the Concessioning Authority in discharge of its obligations hereunder from the Concessionaire; provided that such taking over by the Concessioning Authority shall be of no greater scope and of no longer duration than is reasonably required.

(iii) the Concessioning Authority has the right, to recover the costs specified in Article 7.1 (d) directly from the Escrow Account as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Concessioning Authority under this Article 7.1 d (iii) and debit the same to O&M Expenses.

7.2 Utilities and Services

The Concessioning Authority shall, during the Concession Period, provide access to the Concessionaire to the Project site to enable the procurement of infrastructure facilities and utilities necessary for the implementation, operations, and maintenance of the Project/Project Facilities and Services.

- **Power & Telecommunications:** The Concessionaire shall, at its own cost and expense, make its own independent arrangements for the sourcing, supply, distribution, and maintenance of all electrical power and telecommunication facilities required for the Project.
- **Water Supply:** Concessionaire shall, at its own cost and expense, make its own independent arrangements for the sourcing of water through the appropriate authority.
- **NOCs and Permissions:** The Concessionaire shall be solely responsible for applying for, procuring, and maintaining all necessary No Objection Certificates (NOCs), clearances, permits, and connections from the respective local utilities and municipal authorities, including but not limited to the **Tata Power Company Limited (TPCL)** and the **Brihanmumbai Municipal Corporation (BMC)**.
- **Authority Assistance:** The Concessioning Authority may, upon written request from the Concessionaire, provide reasonable assistance or issue recommendatory letters to facilitate these applications, without creating any liability or binding obligation on the Authority.
- The Concessioning Authority shall grant Right of way for laying the above utilities and services . The Concessionaire shall pay wayleave for such Right of way at Re 1/- annum.

7.3 Liability for Shortfall in Performance

(a) In the event the Concessioning Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall

short of the Performance Standards, the Concessioning Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Appendix 14 of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same, recover the amount from the Concessionaire. Provided that on receipt of the demand, the Concessionaire may make a written representation to the Concessioning Authority which shall be considered by the Concessioning Authority on merits and the Concessioning Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

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

ARTICLE 8

8 User Charge

8.1 User Charge

(a) The Concessionaire shall be entitled to determine the User Charges and generate revenue by means of collecting User Charges from Users of Project Facilities and Services within the Project Site. The Concessionaire shall intimate to the Concessioning Authority the services and activities in respect of which User Charges are levied, and any service or activity not forming part of the Scope of Work shall require the prior approval of the Concessioning Authority. The Concessionaire shall be responsible for fulfilling all the regulatory and statutory obligations applicable as per the Concession Agreement.

(b) The Concessionaire shall submit to the Authority its Annual standard tariff structure chart of all the services provided to Users including events and activities, at least 30 (thirty) days prior to the commencement of each Accounting Year, and shall publish the same in accordance with Article 8.1(d). Save for special discounts and dynamic pricing notified in the manner set out below, the standard tariff shall not be revised more than once in an Accounting Year. The Concessionaire may offer special discounted charges to any class of clients as it may deem necessary for promotion of its business. Provided, however, that it shall notify such special discounts, group discounts, happy hour discounts or dynamic pricing on the Project Portal as mentioned under Article 7.1(a)(xiv) at least 15 (fifteen) days prior to the effective date of the application of such discounts with intimation to the Authority on the same date of uploading on the portal.

(c) The Concessionaire may, for occupancy of rooms (keys) in the Marina Club by respective Users as applicable, levy and recover such tariffs as it may determine from time to time and shall also be entitled to charge market related rates for other services such as telephone, telefax, laundry, food, beverages, liquor, recreation amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, outdoor water sports, Wi-Fi services and any other service (the Associated Services). The Concessionaire may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by the Concessionaire.

(d) The Concessionaire shall publicly disclose on the Portal referred to in Article 7.1(a)(xiv), and shall furnish for display on the website of the Authority, the applicable Tariff for all Project Facilities and Services and the real-time availability of berths, and shall provide a transparent online booking mechanism for berths. The Concessionaire shall submit to the Authority, by the 10th (tenth) day of each Month, the booking and Berth Occupancy data for the preceding Month in the format prescribed by the Authority.

(e) The berthing Tariff charged to Indian-flag vessels of less than 15 (fifteen) metres length overall shall not exceed the corresponding published berthing tariff of Dubai creek Marina,

Dubai, for the time being in force, converted into Indian Rupees at the Reserve Bank of India reference rate prevailing on the date of notification of the Tariff.

8.2 Levy and Recovery of the User Charge

The Concessionaire shall be entitled to recover User Charge from the users of the Project Facilities and Services as per the Tariff set by the Concessionaire as per Article 8.1. The Concessionaire shall, subject to Article 8.3 hereunder, deposit all Tariff and other receipts in relation to the Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Concessionaire or of any other person.

8.3 Collection of Cesses and Charges

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

ARTICLE 9

9 PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

(a) The Concessionaire shall pay to the Authority an annual fee, with applicable taxes extra (the "License Fee"), as under: (i) Rs. 3,00,00,000 (Rupees Three Crore only) per annum for each of the first 3 (three) years of the Concession Period, being the construction period; and (ii) for the 4th (fourth) year of the Concession Period, Rs. 46,29,76,411.20 (Rupees Forty Six Crore Twenty Nine Lakh Seventy Six Thousand Four Hundred and Eleven and Paise Twenty only), per annum and thereafter escalated at 3% (three per cent) per annum, year on year, for each subsequent year of the Concession Period. The License Fee for the first year shall be payable on the Date of Award of Concession, and the License Fee for each subsequent year shall be due and payable in advance on or before each anniversary of the Date of Award of Concession.

The details of License Fee payable from 1st year through 45th year is brought out below:

Year	Escalation	License Fee (Rs.)	Cumulative Total (Rs.)
1	**—**	**3,00,00,000.00**	**3,00,00,000.00**
2	**—**	**3,00,00,000.00**	**6,00,00,000.00**
3	**—**	**3,00,00,000.00**	**9,00,00,000.00**
4	**—**	**46,29,76,411.20**	**55,29,76,411.20**
5	**3%**	**47,68,65,703.54**	**1,02,98,42,114.74**
6	**3%**	**49,11,71,674.65**	**1,52,10,13,789.39**
7	**3%**	**50,59,06,824.89**	**2,02,69,20,614.28**
8	**3%**	**52,10,84,029.64**	**2,54,80,04,643.92**
9	**3%**	**53,67,16,550.53**	**3,08,47,21,194.45**
10	**3%**	**55,28,18,047.05**	**3,63,75,39,241.50**
11	**3%**	**56,94,02,588.46**	**4,20,69,41,829.96**
12	**3%**	**58,64,84,666.11**	**4,79,34,26,496.07**
13	**3%**	**60,40,79,206.09**	**5,39,75,05,702.16**
14	**3%**	**62,22,01,582.27**	**6,01,97,07,284.43**
15	**3%**	**64,08,67,629.74**	**6,66,05,74,914.17**

Year	Escalation	License Fee (Rs.)	Cumulative Total (Rs.)
16	**3%**	**66,00,93,658.63**	**7,32,06,68,572.80**
17	**3%**	**67,98,96,468.39**	**8,00,05,65,041.19**
18	**3%**	**70,02,93,362.44**	**8,70,08,58,403.63**
19	**3%**	**72,13,02,163.31**	**9,42,21,60,566.94**
20	**3%**	**74,29,41,228.21**	**10,16,51,01,795.15**
21	**3%**	**76,52,29,465.06**	**10,93,03,31,260.21**
22	**3%**	**78,81,86,349.01**	**11,71,85,17,609.22**
23	**3%**	**81,18,31,939.48**	**12,53,03,49,548.70**
24	**3%**	**83,61,86,897.66**	**13,36,65,36,446.36**
25	**3%**	**86,12,72,504.59**	**14,22,78,08,950.95**
26	**3%**	**88,71,10,679.73**	**15,11,49,19,630.68**
27	**3%**	**91,37,24,000.12**	**16,02,86,43,630.80**
28	**3%**	**94,11,35,720.12**	**16,96,97,79,350.92**
29	**3%**	**96,93,69,791.72**	**17,93,91,49,142.64**
30	**3%**	**99,84,50,885.47**	**18,93,76,00,028.11**
31	**3%**	**1,02,84,04,412.03**	**19,96,60,04,440.14**
32	**3%**	**1,05,92,56,544.39**	**21,02,52,60,984.53**
33	**3%**	**1,09,10,34,240.72**	**22,11,62,95,225.25**
34	**3%**	**1,12,37,65,267.94**	**23,24,00,60,493.19**
35	**3%**	**1,15,74,78,225.98**	**24,39,75,38,719.17**
36	**3%**	**1,19,22,02,572.76**	**25,58,97,41,291.93**
37	**3%**	**1,22,79,68,649.94**	**26,81,77,09,941.87**
38	**3%**	**1,26,48,07,709.44**	**28,08,25,17,651.31**
39	**3%**	**1,30,27,51,940.72**	**29,38,52,69,592.03**
40	**3%**	**1,34,18,34,498.94**	**30,72,71,04,090.97**
41	**3%**	**1,38,20,89,533.91**	**32,10,91,93,624.88**
42	**3%**	**1,42,35,52,219.93**	**33,53,27,45,844.81**
43	**3%**	**1,46,62,58,786.53**	**34,99,90,04,631.34**
44	**3%**	**1,51,02,46,550.13**	**36,50,92,51,181.47**
45	**3%**	**1,55,55,53,946.63**	**38,06,48,05,128.10**
Total		**38,06,48,05,128.10**	**—**

In addition to the aforementioned charges, the Concessionaire shall also pay Wayleave charges to the Authority at Re.1/- per annum for laying of utilities underground in the premises of the Authority.

9.2 Payment of Royalty

(a) **Royalty as Revenue Share:** The Concessionaire shall pay Royalty to the Concessioning Authority in the form of a share of the Actual Gross Revenue (the "**Revenue Share**"), calculated at the Quoted Revenue Share Percentage of [●]% ([●] per cent), and shall apply uniformly for the entire Concession Period. For the avoidance of doubt:

(i) the Revenue Share shall be calculated only on the Actual Gross Revenue, including the Gross Revenue determined under Article 9.2A; and

(ii) the Revenue Share shall be in addition to the License Fee payable under Article 9.1.

(b) **Commencement.** The Revenue Share shall be payable from the earlier of:

(i) the COD; and

(ii) the date on which the Concessionaire first earns any revenue from operations permitted before COD under Article 6.3(c) or Article 6.3(d),

and shall continue to be payable until the Transfer Date.

(c) **Monthly payment.** The Revenue Share shall be paid monthly. Within 7 (seven) days after the end of each Month, the Concessionaire shall:

(i) pay to the Concessioning Authority the Revenue Share on the Actual Gross Revenue accrued during that Month; and

(ii) simultaneously submit a statement of the Actual Gross Revenue for that Month, broken down by revenue stream, and the Revenue Share computed thereon, certified by its chief financial officer.

Where the date of commencement under Article 9.2(b), or the Transfer Date, falls part-way through a Month, the Revenue Share for that Month shall be calculated only on the Actual Gross Revenue accrued during the part of the Month falling within the Concession Period.

Illustration: *if the COD falls on 17th (seventeenth) October, the first monthly payment shall be due on or before 7th (seventh) November and shall be calculated on the Actual Gross Revenue accrued from 17th October to 31st October, together with any revenue earned before COD under* Article *6.3(c) which has not already borne Revenue Share.*

(d) **Annual reconciliation.** Within 120 (one hundred and twenty) days after the end of each Accounting Year, the Concessionaire shall submit a statement of the Actual Gross Revenue for that Accounting Year and the Revenue Share payable thereon, certified by its Statutory Auditors on the basis of its audited accounts, whereupon:

(i) if the Revenue Share so certified exceeds the aggregate of the monthly payments for that Accounting Year, the Concessionaire shall pay the difference together with the statement, along with interest thereon under Article 9.2(f) from the due date of each monthly payment that fell short; and

(ii) if the aggregate of the monthly payments exceeds the Revenue Share so certified, the excess shall be adjusted, without interest, against the succeeding monthly payments.

Such reconciliation shall be without prejudice to the rights of the Concessioning Authority under Article 9.2(h) and Article 9.4.

(e) **Last Accounting Year.** For the last Accounting Year, the Revenue Share shall be payable on the Actual Gross Revenue accrued from the first day of that Accounting Year up to the Transfer Date, and on no revenue thereafter. The final reconciliation statement under Article 9.2(d) shall be submitted, and any difference paid, within 90 (ninety) days after the Transfer Date. The Concessioning Authority may recover any amount remaining due from the Deemed Performance Security or by set-off against any amount payable by it to the Concessionaire, including any Termination Payment.

(f) **Delayed payment.** Any Revenue Share not paid on its due date shall carry interest at the rate of 3% (three per cent) per annum above the one-year SBI MCLR prevailing on the due date, from the due date until the date of actual payment, compounded monthly. If any monthly payment or reconciliation amount, together with interest thereon, remains unpaid for 60 (sixty) days after its due date, the same shall constitute a Concessionaire Event of Default under Article 15.1(a).

(g) **Manner of payment.** All payments of Revenue Share shall be made from the Escrow Account in accordance with Article 9.5.4(d), to the bank account notified by the Concessioning Authority, together with applicable GST, and shall be paid in full without any set-off, counterclaim or deduction, save for tax deducted at source as required under Applicable Laws, which shall be evidenced by certificates furnished to the Concessioning Authority.

(h) **Verification of Gross Revenue.**

(i) In order to satisfy itself that the Concessionaire is reporting its Gross Revenue fully and faithfully, the Concessioning Authority may depute its representatives to the Marina and to the offices of the Concessionaire, shall have read-only access to the berth-management, point-of-sale, booking-portal and accounting systems of the Concessionaire, and may call

for any data, log sheet, invoice, Sub-Concession Agreement, document or statement as it may consider necessary for determining the revenue earned by the Concessionaire.

(ii) The Concessionaire shall furnish, along with each annual statement under Article 9.2(d), a certificate from its Statutory Auditors confirming that the Gross Revenue has been computed in accordance with this Agreement, including the definition of Gross Revenue and Article 9.2A.

(iii) Any shortfall established under this Article 9.2(h), or by a Special Audit under Article 9.4, shall be paid within 30 (thirty) days of demand, together with interest under Article 9.2(f). Where such shortfall exceeds 5% (five per cent) of the Revenue Share paid for the relevant period, the same shall constitute a breach of this Agreement and the costs of such verification shall be borne by the Concessionaire.

9.2A Gross Revenue from Sub-Concessions and Letting

(a) **Facilities operated by the Concessionaire.** Where the Concessionaire itself, or through an O&M Contractor, operates any of the Project Facilities and Services, including the Hotel, the Tourism Centre and the Marina Club, the entire revenue earned therefrom shall form part of the Gross Revenue.

(b) **Space let to others.** Where the Concessionaire lets out, sub-licenses or grants a sub-concession of any built-up space or land forming part of the Project under Article 7.1(a)(xvii), whether the building is constructed by the Concessionaire or by the Sub-Concessionaire, the letting fee, rent, licence fee, premium, revenue share or other consideration receivable from the Sub-Concessionaire shall form part of the Gross Revenue. For each Accounting Year, the consideration for such space shall be deemed to be the higher of:

(i) the Floor Letting Rate applied to the carpet area let; and

(ii) the consideration actually receivable under the Sub-Concession Agreement.

(c) **Floor Letting Rate.** The "**Floor Letting Rate**" means Rs. 225 (Rupees Two Hundred and Twenty Five) per sq. ft. of carpet area per month for the 1st (first) year of the Concession Period, escalated at 4% (four per cent) per annum, compounded year on year, with effect from the 2nd (second) year of the Concession Period. For the avoidance of doubt, such escalation shall run from the 1st year of the Concession Period and not from the date of the Sub-Concession Agreement or the COD.

(d) **Lettings to Affiliates.** Any letting to an Affiliate of the Concessionaire or of any member of the Consortium shall be deemed to be at the Floor Letting Rate, unless the actual consideration is higher.

(e) **Advance payments.** Where any rent, premium or other consideration under a Sub-Concession Agreement is received upfront or in advance, in whole or in part, the amount to be included in the Gross Revenue of the Accounting Year in which it is received shall be the higher of:

(i) the amount actually received; and

(ii) the present value, as on the date of receipt, of the Floor Letting Rate payable for the carpet area and the period covered by such payment, computed by escalating the Floor Letting Rate at 4% (four per cent) per annum and discounting at the yield on 10-year Government of India securities prevailing on the date of receipt,

and any amount so included shall not be included again in the Gross Revenue of any subsequent Accounting Year.

(f) **Reporting.** The Concessionaire shall furnish to the Concessioning Authority, along with each annual statement under Article 9.2(d) and the statement under Article 9.4, the details of all Sub-Concession Agreements in force, including for each such agreement the counterparty and whether it is an Affiliate, the land area and carpet area let, the permitted use, the tenure and the consideration received and receivable thereunder.

9.3 Additional Utilities or Services

The Concessionaire shall also pay rent or other charges for any additional land (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioning Authority to the Concessionaire in accordance with Article 7.1c(iii) as per the terms, conditions and covenants including on payment of rates specified by the Concessioning Authority. Such rates shall be equal to 1.2 times the Scale of Rates. The charges in case of additional land will be 1.2 times of scale of rates as applicable at the time of giving additional land, where the fees is paid on half year/ yearly basis, it may also contain an escalation clause as in Bidding Documents but periodic review of SOR, if any will not be applicable. The present rates applicable in respect of land, utilities and services are set out in Appendix 12. It is further clarified that the Concessionaire shall pay for any Additional Net Built Up area developed at the project site (beyond 70,180.04 sqm) @ 1.20 times the prevailing Scale of Rates.

9.4 Certified Accounts

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, Yacht/vessel/user wise information, and, as relevant, the details of all the

Services provided by category, utilities/bunker supplied, tariffs charged and the amount of rates received. The Concessionaire shall submit to the Concessioning Authority a financial statement including number of Yacht handled, yacht berth days, utilities supplied, services provided for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 90 (Ninety) Days of the end of each such period.

The Concessioning Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the **"Additional Auditor"**) and empaneled by CAG to conduct a special audit of the number of Yacht handled, yacht berth days, utilities supplied, services provided and the financial statements, documents and supporting evidences thereto and compliances as may be mandated by or arising out of the Concession Agreement and report to the Concessioning Authority such information as may be desired by the Concessioning Authority for any period and the number of Yacht handled, yacht berth days, utilities supplied, services provided etc ("**Special Audit**").

In the event that the number of Yacht handled, yacht berth days, utilities supplied, services provided reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay Royalty basis the reported figure by the Additional Auditor. The Concessionaire shall also pay interest @ 3% above the SBI MCLR on the difference between the Royalty paid by the Concessionaire based on the figures reported by the Statutory Auditor and that payable by the Concessionaire based on the reported figures by the Additional Auditor for the intervening period between the payment of the Royalties as above. Further, the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the figures reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5%, the Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

9.5 Escrow Account

9.5.1 The Concessionaire shall, prior to the Date of Award of Concession, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.

9.5.2 The nature and scope of the Escrow Account are fully described in the agreement ("Escrow Agreement") to be entered into amongst the Concessionaire, the Concessioning Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Appendix 15.

9.5.3 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
(b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
(c) all Tariff collected by the Concessioning Authority in exercise of its rights under the Concession Agreement;
(d) all payments by the Concessioning Authority, after deduction of any outstanding License Fee and Royalty; and
(e) Termination Payment

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Documents.

9.5.4 Withdrawals during Concession Period

At the beginning of every month post COD, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

(a) all taxes due and payable by the Concessionaire for and in respect of the Project;
(b) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
(c) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;
(d) towards payment of Royalty to the Authority;
(e) towards its debt service obligations under the Financing Documents;
(f) towards payment of other sums payable to the Concessioning Authority and liquidated damages, if any;
(g) towards any reserve requirements in accordance with the Financing Documents;
(h) balance, if any, in accordance with the instructions of the Concessionaire

9.5.5 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project;
(b) 90% of Debt Due excluding subordinated debt;
(c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioning

Authority as due and payable to it by the Concessionaire;

(d) outstanding debt service including the balance of Debt Due excluding subordinated debt;
(e) outstanding subordinated debt;
(f) incurred or accrued operation & maintenance expenses;
(g) any other payments required to be made under this Agreement; and
(h) balance, if any, in accordance with the instructions of the Concessionaire; Provided that no appropriations shall be made under Sub-clause (h) of this Article 9.5.5 until a Vesting Certificate has been issued by the Concessioning Authority under the provisions of Article 18.5.

The provisions of this Article 9.5 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 9.5.5 have been discharged.

9.5.6 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period shall be appropriated in the following order of priority:

(a) towards taxes and statutory dues payable by the Concessionaire;
(b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
(c) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
    (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioning Authority;
    (ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and
    (iii) Vesting Certificate has been issued by the Concessioning Authority under the provisions of Article 18.5.

ARTICLE 10

10 ASSETS: PERMITTED CHARGE

10.1 *Assignment of Rights*

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

10.2 *Permitted assignment and charges*

The restraints set forth in Article 10.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Concessioning Authority under this Agreement;
(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
(d) liens or encumbrances required by any Applicable Law.

ARTICLE 11

11 SHAREHOLDING

11.1 Ownership Structure

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

11.2 Shareholding

The Concessionaire shall ensure that the Bidder/ members of the Consortium maintain Management Control at least until expiry of the five (5) years after COD as also maintain their equity holding in the Concessionaire such that :

(a) Selected Bidder/Consortium Members together with its/their Associates hold not less than 51% of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of qualification in response to the Request for Proposal shall hold less than 26% of such equity until expiry of five (5) years after COD. At any time, after expiry of the aforesaid share holding period, lead member can approach Concession Authority for approval proposing a new entity/ consortium. Concession Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in the Bid Document for the Project, including the Technical Capacity and the operation and maintenance experience in the marina sector and provided further that the Marina shall continue to be operated by the Concessionaire, and that no such change shall permit the sub-licensing of the Core Marina Assets; and

(b) M/s [●] ("Lead Member") of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% of the Consortium's holding in the paid-up equity capital of the Concessionaire.

Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioning Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.

Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favor of Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessioning Authority as stated hereinbefore and in accordance with the Financing Documents.

11.3 Constituent Documents

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

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

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessioning Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

ARTICLE 12

12 GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

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

(b) Taxes and Duties

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

(c) Insurance

(i) ***Insurance Requirement***

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessioning Authority as a consequence of any act or omission of the Concessionaire. The Concessionaire shall procure that in each insurance policy, the Concessioning Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the Parties agree that the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues. The Concessionaire shall purchase and maintain insurances as are prudent, including but not limited to the following:

(a) builder's all risk insurance;

(b) loss, damage or destruction of the Project Facilities and Services, at replacement value;

(c) comprehensive third-party liability insurance including injury or death to personnel of the Concessioning Authority and others who may enter the Project Site or the Port's Assets;

(d) workmen's compensation insurance;

(e) marine cum storage cum erection insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioning Authority, its employees and agents engaged in or connected to the Project and the Project Site and Port Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

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

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

(iii) ***Evidence of Insurance Cover***

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

(iv) ***Application of Insurance Proceeds***

Subject to the provisions of the Financing Documents, all monies received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Senior Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

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

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioning Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessioning Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessioning Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioning Authority therefor shall be reimbursed with interest @ 3% above SBI MCLR per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioning Authority by exercising right of set off or otherwise.

(vi) ***Waiver of Subrogation***

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

(vii) ***Concessionaire's waiver***

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessioning Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

(d) Indemnification

(i) The Concessionaire shall indemnify, defend, save and hold harmless the Concessioning Authority and its officers, servants, agents, Government Instrumentalities, Designated GOI Agencies and Concessioning Authority owned and/or controlled entities/enterprises, (the "Government Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Concessioning Authority or any User or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

(ii) The Concessioning Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Concessioning Authority in the land comprised in the Site, and/or (b) breach by the Concessioning Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any

related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

(e) Engagement of Contractors

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

Provided:

(i) the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for nonperformance or for any defect, deficiency or delay in the construction and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

(ii) the Concessioning Authority shall on request by the Concessionaire, assist in obtaining, if required, security clearance for the Contractor the Concessionaire intends to engage

(iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioning Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

(iv) any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

(f) Condition Survey

(i) The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Independent Engineer, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Port's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessioning Authority may itself cause the condition survey and inventory of the Port's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessioning Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.

(ii) Deleted

(g) *Compliance to Green Ports Policy*

The Concessionaire shall comply with the measures set out in Appendix 20.

12.2 Of the Concessioning Authority

(a) Assistance in Obtaining Approvals, Permits and Licenses

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

(b) Taxes and Duties

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

(c) Competing Facilities

The Concessioning Authority shall not operationalise any additional facility within the Port Limits for a yacht marina, either on its own or through any other Person, until the earlier of (i) 10 (ten) years from the Scheduled Project Completion Date; or (ii) the average annual Berth Occupancy at the Project Facilities and Services reaching 70% (seventy per cent) of the Project Capacity for 2 (two) consecutive years (the "Exclusivity Period"). It is clarified that the moorings and anchorages existing within the Port Limits on the date of this Agreement shall not constitute a competing facility.

(d) General Rights of Inspection and Verification

The Concessioning Authority may during the pendency of the Agreement itself or by Independent Engineer verify the performance of obligations of the Concessionaire as set out in this Agreement.

12.3 Of the Concessioning Authority and the Concessionaire

(a) Monitoring Arrangement

The parties shall furnish to each other periodical status reports relating to key milestones and obligations as per Appendix 17 "Monitoring Arrangement"

(b) Compliance with Laws and Regulations

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

(c) Rights to Documents

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

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

(ii) ***Concessionaire's Documents***

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

(iii) ***Confidentiality***

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

(iv) ***Obligation to Cooperate***

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

(v) ***Substitution Agreement***

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

ARTICLE 13

13 CHANGE IN LAW

13.1 Change in Law

13.1.1 "**Change in Law**" means the occurrence of any of the following after the Bid Date and having Adverse Impact as per the provisions of the Article 13.1.2 (i):

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law or any international treaty to which Government of India is a signatory;

(c) the commencement of any Indian law which has not entered into effect until the Bid Date;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project;

13.1.2 ***The Remedy***

(i) If as a result of Change in Law, the Concessionaire suffers decrease in traffic of Project Facilities and Services and reduction in revenue or an increase in costs or reduction in EBITDA or other financial burden, the aggregate financial effect of which results in either (a) reduction by more than 25% of EBITDA in the affected financial year as compared to the average EBITDA of the previous three financial years or from COD till occurrence of Change in Law in case the Project is operational for less than three years from COD and this is enduring in nature due to the effect of Change in Law or (b) an increase in the capital expenditure by more than 20% of the estimations before the occurrence of such Change in Law provided that such an increase in capital expenditure has been certified by the Senior Lender and the Independent Engineer, or (c) during construction period, the purpose for which the Project is being constructed becomes non permissible or unviable due to Change in Law (hereby (a), (b), (c) known as "**Adverse Impact**"), the Concessionaire may so notify the Concessioning Authority. Upon such notification, the Concessioning Authority and the Concessionaire shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice and set up a Conciliation & Settlement Committee ("**Committee**");

(ii) The Committee referred above shall conduct its proceedings in accordance with the provisions of Article 19 as if it were a conciliation proceeding thereunder, save and except as provided in this Article 13.1.2;

(iii) The Committee referred to in this Article 13.1.2 shall conduct preliminary proceedings to satisfy itself that -

(a) A Change in Law has occurred, and this has a Adverse Impact on an enduring basis; and

(b) the Change in Law or its effects have not been caused by any Party by any act or omission or negligence on its part, and if the Committee is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Article 13.1.2.

(iv) Upon completion of the proceedings referred to in this Article 13.1.2, the Committee may by a reasoned order make recommendations and setting out the terms of reference which shall be:

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Change in Law so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in reduction in EBIDTA or increase in capital expenditure as described in 13.1.2 (i);

(c) of no greater duration than is necessary for mitigating the effects of the Change in Law; and

(d) quantified and restricted in terms of relief or remedy and may include extension of Concession Period as per the provisions of Article 13.2 or both, as the case may be, subject to such extension in the Concession Period is limited to a maximum of 10 (ten) years, or any other remedy as it deem appropriate but shall not include any recommendation of any financial compensation by the Concessioning Authority to the Concessionaire.

(e) Within 15 (fifteen) days of receiving the order and terms of reference referred to in Article 13.1.2

(v) the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the Committee for mitigating the effects of the Change in Law and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the "MoU") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

(vi) Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Parties may resolve this matter as per the provisions of Article 19. For the avoidance of doubt, it is agreed that this Article 13.1.2 shall be restricted to changes in law directly affecting the Concessionaire's costs or EBITDA or capital expenditure of performing its obligations under this Agreement.

ARTICLE 14

14 FORCE MAJEURE

14.1 Force Majeure Event

As used in this Agreement, Force Majeure Event means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Articles 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event:

(a) is beyond the reasonable control of the Affected Party

(b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and

(c) prevents the Affected Party from performing or discharging its obligations under this Agreement and thereby has Material Adverse Effect on the Affected Party

14.2 Non-Political Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;

(c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the Concessionaire or on behalf of the Contractor;

(d) the discovery of geological conditions, toxic contamination or archeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

(a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Adverse Impact;

(b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Scope of Work, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency of any contract by which the Concessionaire or the Contractor as the case may be is bound;

(c) early determination of this Agreement by the Concessioning Authority for reasons of national emergency, national security or the public interest;

(d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

Any of the following events which prevents the Affected Party from performing any of its obligations under this Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry wide or State-wide strikes or industrial action;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee Tariff by the Concessionaire;

(d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii)

enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by the Concessioning Authority; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

(a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

(b) The Notice shall inter-alia include full particulars of:

(i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

(ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;

(iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and

(iv) any other relevant information.

(c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

(a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or

(b) termination of this Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Costs, Revised Timetable

14.9.1 ***Costs***

(a) Upon occurrence of any Force Majeure Event prior to the Date of Award of Concession, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

(b) Upon occurrence of a Force Majeure Event after the Date of Award of Concession, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

(i) upon occurrence of a Non-Political Event, the Pates shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(ii) upon occurrence of an Other Event, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Concessioning Authority to the Concessionaire; and

(iii) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Concessioning Authority to the Concessionaire. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues from Tariff or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

Save and except as expressly provided in this Article 14.9.1, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto

14.9.2 ***Extension of Time/Period***

(a) Upon the occurrence of any Force Majeure Event prior to the Date of Award of Concession, the

period set forth in Article 3.2 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

(b) At any time after the Date of Award of Concession, if any Force Majeure Event occurs:

(i) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(ii) after COD, whereupon the Concessionaire is unable to collect Tariff despite making best efforts or it is directed by the Concessioning Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Tariff on account thereof; provided that in the event of reduction in collection of Tariff on account of partial inability or suspension, as the case may be, which causes the daily collection to decline below 90% of the Average daily revenue, the Concessioning Authority shall extend the Concession Period in proportion to the loss of Tariff on a daily basis. For the avoidance of doubt, loss of 25% in collection of Tariff as compared to the Average daily revenue for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period

14.10 Termination Due to Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) Days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

ARTICLE 15

15 EVENTS OF DEFAULT

15.1 Events of Default

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

(a) The Concessionaire Event of Default

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

(i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;

(ii) construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;

(iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the COD is delayed for more than 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;

(iv) failure to pay the License Fee or the Royalty, together with delayed interest, within the period specified in Article 9 (including the period of 60 (sixty) days under Article 9.2(c)), or delay in payment of the License Fee or the Royalty on more than 5 (five) occasions in the aggregate during the Concession Period;

(v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

(vi) a default under the O&M Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

(vii) deleted

(viii) any representation made, or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

(ix) the Concessionaire passing a resolution for voluntary winding up;

(x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

(xi) occurrence of default under the Financing Documents pursuant to which the Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;

(xii) levy of an execution or restraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days;

(xiii) the Performance Guarantee is not maintained in terms of the provisions hereof;

(xiv) the Concessionaire abandons or expresses its intention to revoke/terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

(xv) a change in shareholding such that the beneficial interest of the Bidder/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;

(xvi) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking other than transfer of assets in the ordinary course of business in contravention with the provisions of Article 11 hereof;

(xvii) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;

(xviii) failure to achieve the Minimum Guaranteed Berth Occupancy in at least 5 (five) Operating Years in any Moving Block Period of seven years, as provided in Article 7.1(a)(xix) and Appendix 13;

(xix) failure to obtain or regain the marina accreditation within the period specified in Article 7.1(a)(xx), or recurrence of such failure;

(xx) execution of any Sub-Concession Agreement without the prior written approval of the Concessioning Authority, or any sub-licensing, sub-letting or sub-concession of the Core Marina Assets, in breach of Article 7.1(a)(xvii); and

(xxi) occupation or commercial use of any Commercial Permitted Facility in breach of Article 6.3(e), or use of any part of the Project Site in breach of Article 7.1(a)(xxi).

(b) The Concessioning Authority Event of Default

(i) the Concessioning Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.

(ii) any representation made, or warranties given by the Concessioning Authority under this Agreement is found to be false or misleading.

(iii) appointment of a provisional liquidator, administrator or receiver of the whole or part of the Port's Assets in any legal proceedings initiated against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

(iv) levy of an execution or restraint on the Port's Assets in any proceedings against the Concessioning Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 90 (ninety) Days.

15.2 Parties Rights

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

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

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

15.3 Consultation Notice

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

15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree (**"Remedial Period"**) the Parties shall, in consultation with the Senior Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice

to this, if the underlying event is a Concessionaire Event of Default, the Concessioning Authority shall in consultation with the Senior Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

(a) the change of management or control/ownership of the Concessionaire;

(b) the replacement of the Concessionaire by a new operator (**"Selectee"**) proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include:

(i) the criteria for selection of the Selectee;

(ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Selectee;

(iii) handing over/ transfer of the Project Site, the Port's Assets and the Project Facilities and Services to the Selectee;

(iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Senior Lenders' charge on the Concessionaire's assets;

(v) acceptance by the Selectee of any amounts due to the Concessioning Authority from the Concessionaire under this Agreement; and

(vi) payment of consideration for the Concessionaire's assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Senior Lenders agree upon any of the measures set out in Article 15.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

15.7 Termination due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Senior Lenders have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8 Concessioning Authority's Rights of Step-in

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

(a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;

(b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;

(c) step in and succeed upon election by Concessioning Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioning Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

Provided, that in such circumstances, the Concessioning Authority shall assume the obligations of the Concessionaire, either by itself or through an operation and maintenance contractor appointed in consultation with the Senior Lenders, with respect to the Senior Lenders during such Remedial Period out of the cash flows of the project. Provided further, the Concessionaire acknowledges that any payments made by the Concessioning Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioning Authority to the Concessionaire in terms of the provisions of this Agreement.

ARTICLE 16

16 TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default having Material Adverse Effect shall do so by issue of a notice in writing (**"Termination Notice"**) to the other Party and simultaneously deliver a copy thereof to the Senior Lenders. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, (**"Termination Period"**) and at the expiry of the Termination Period, this Agreement shall stand terminated without any further notice.

16.2 Obligations during Termination Period

During Termination Period, the Parties shall, subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no Termination Payment is payable by the Concessioning Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioning Authority shall by a notice in writing ("**Requisition**") call upon the Concessionaire to furnish the following information to enable the Concessioning Authority to estimate the likely Termination Payment payable by the Concessioning Authority to the Concessionaire and/or to finalise the items of Concessionaire's assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioning Authority.

(a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Senior Lenders' certificate;
(b) data or records [to be specified by Concessioning Authority] regarding the operation and maintenance of the Project Facilities and Services;

(c) specifications regarding the Concessionaire's assets comprised in the Project Facilities and Services; and

(d) any other information or records [to be specified by Concessioning Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

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

16.4 Condition Survey

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

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

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

16.5 Consequences of Termination

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

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

(b) the Concessioning Authority shall be entitled to encash any subsisting e-bank guarantee(s)/ insurance surety bond(s) provided by the Concessionaire against any amounts owing to the Concessioning Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the Termination Payment payable to the Concessionaire in accordance with Article 17 in the Escrow Account, the Concessioning Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Site/Port Assets/Project Facilities & Services by the Concessionaire to the Concessioning Authority shall be free from any such obligation.

ARTICLE 17

17 COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

(i) If the termination is due to a Non Political Event, Termination Payment payable to the Concessionaire shall be 90% of the Debt Due LESS any amount due to the Concessioning Authority by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

(ii) If the termination is due to an Other Event, Termination Payment payable to the Concessionaire shall be aggregate of:

a. Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due;
b. 110% of the Adjusted Equity; and
c. an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in computation of the amount payable hereunder.

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

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

(b) Termination due to Concessionaire Event of Default

(i) If the termination is after the COD, due to a Concessionaire Event of Default, the Termination Payment payable by the Concessioning Authority to the Concessionaire shall be an amount equal to:

a. 90% of the Debt Due less Insurance Cover; and
b. 70% of the amount representing the Additional Termination Payment.

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Article 17.1 (b) (ii).

(ii) Upon termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% of the Total Project Cost and in the event of expenditure exceeding such 30% and forming part of Debt Due, the provisions of Article 17.1(b)(i) shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 30%. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to termination is 90% of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 60% of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 54% of the Total Project Cost or 90% of the Debt Due.

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

(c) Termination due to Concessioning Authority Event of Default

If the termination is due to a Concessioning Authority Event of Default, the Termination Payment payable by the Concessioning Authority shall be equal to the aggregate of:

(i) Debt Due less Insurance Cover;
(ii) 150% of the Adjusted Equity; and
(iii) 115% of the amount representing the Additional Termination Payment.

17.2 No Compensation on Expiry of Concession Period

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

17.3 Transfer Fee and Charges

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

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

17.4 Payment of Compensation to Senior Lenders

The Concessionaire hereby irrevocably authorises the Concessioning Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the Termination

Payment payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioning Authority shall stand duly discharged of its obligations regarding payment of Termination Payment under this Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of its assets taken over by the Concessioning Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of Termination Payment by Concessioning Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessioning Authority in respect of Concessioning Authority's obligation regarding payment of Termination Payment to the Concessionaire under this Agreement.

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

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

17.5 Delayed Payment of Compensation

Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay for reasons other than those attributable to the Concessionaire, the Authority shall pay interest at a rate equal to 3% (three per cent) above the SBI MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of Termination Payment in accordance with this Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioning Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioning Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioning Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioning Authority the

Tariff collected and other revenues derived from the Project minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioning Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date, or from COD till Transfer date in case the Project is terminated less than three years from COD. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioning Authority in accordance with the requirements thereof under this Agreement.

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

17.7 Remedies Cumulative

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

17.8 Additional Termination Payment

Payment due and payable in respect of Specified Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD but no later than the 35th (thirty fifth) anniversary of the Date of Award of Concession, shall be limited to the lowest of:

(i) Adjusted Depreciated Value thereof;

(ii) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Concessioning Authority, within 15 (fifteen) days of termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

(iii) 40% of Total Project Cost.

ARTICLE 18

18 TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

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

18.2 Concessionaire's Obligations

The Concessionaire shall;

(a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;

(b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessioning Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

(c) hand over to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;

(d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;

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

(f) at its cost, transfer to the Concessioning Authority all such Applicable Permits which the Concessioning Authority may require, and which can be legally transferred. Provided if the termination is on account of Concessioning Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioning Authority;

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

18.3 Concessioning Authority's Obligations

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

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

18.4 Risk

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

18.5 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the obligations under Article 18.2 and 18.3 hereinabove have been fulfilled, and the Concessioning Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Appendix 23 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Concessioning Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the obligations under Article 18.2 and 18.3 shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessioning Authority or its nominee on, or in respect of, the Project on the footing that all obligations under Article 18.2 have been complied with by the Concessionaire.

ARTICLE 19

19 DISPUTE RESOLUTION

19.1 Amicable Settlement

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

19.2 Deleted

19.3 Conciliation

In case any dispute is not resolved amicably as provided in Article 19.1, the Concessionaire may agree to refer the matter to conciliation & settlement Committee established by the Concessioning Authority as per provisions contained in Part-III of the Arbitration and Conciliation Act, 1996 (26 of 1996), as amended from time to time (the "**Conciliation & Settlement Committee**"). The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Concessioning Authority on the subject, which shall be in alignment with the provisions contained in Sections 63 and 64 of the Arbitration and Conciliation Act, 1996 (26 of 1996), as amended from time to time. In case the recommendations/decision of the committee is not acceptable to any of the Parties, it shall be free to refer the dispute to the Adjudicatory Board in accordance with the provisions of Article 19.4.

19.4 Adjudication by Adjudicatory Board

A statutory Adjudicatory Board has been constituted under the Major Port Authorities Act, 2021 with powers to receive and adjudicate upon disputes between the Concessionaire and the Concessioning Authority, all disputes not settled under Article 19.3 through conciliation, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the parties in accordance with the applicable laws. For avoidance of doubt, parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the parties cannot refer the dispute, difference or controversy of whatsoever nature again under Arbitration Act and the adjudication hereunder shall be final and binding.

ARTICLE 20

20 REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

(a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;

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

(f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

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

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

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

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

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

20.2 Representations and Warranties of the Concessioning Authority

The Concessioning Authority represents and warrants to the Concessionaire that:

(a) it is duly organised, validly existing and in good standing under the laws of India;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(d) this Agreement constitutes the legal, valid and binding obligation of the Concessioning Authority, enforceable against it in accordance with the terms hereof; and

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

20.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall

immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 21

21 MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is 2.51 m below mean sea level.

21.2Accounts and Audit

21.2.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Gross Revenue and other revenues derived/collected by it from or on account of the Marina and the Licensed Premises and/or their use, including all amounts collected from any sub-licensee), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors (prepared in accordance with accounting standards as per the Applicable Laws), within 90 (ninety) days of the close of the Accounting Year to which they pertain, and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. Further, it is expressly clarified that for the purposes of computation of Gross Revenue, Licence Fee / Concession Fee, revenue share, Premium and Damages or any other term related to Gross Revenue under this Agreement, the accounting standards used will be in accordance with the standards mentioned in the definition of Gross Revenue. The Authority has the right, either through itself or through any of its authorised representatives, to inspect the records of the Concessionaire and of any sub-licensee during office hours and to require copies of relevant extracts of books of accounts, sub-licence agreements and Escrow Account statements, duly certified by the Statutory Auditors, to be provided to the Authority for verification of the basis of payments; and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

b) The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the

preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by companies listed on a stock exchange.

c)On or before the 30th day of June of each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the berth occupancy and utilisation for each category of vessel, yacht and superyacht using the Marina and liable for payment of berthing or other charges therefor, together with utilisation of the repair yard, stack-parking and other Licensed Premises; (b) tariff and charges levied and received, Gross Revenue and other revenues derived from the Marina and the Licensed Premises (including rentals and receipts from any sub-licensee of the Hotel, commercial and other Non-Core areas); and (c) such other information as the Authority may reasonably require.

21.2.2 Appointment of Auditors

(a) The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants ("Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Appendix 22. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

(b) The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Concessioning Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Concessioning Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

(d) The Concessioning Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "Concurrent Auditors") from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire's accounts.

21.2.3 Certification of Claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Concessioning Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of

information in the normal course of business including the submission of License Fee as per Article 9.1.

21.2.4 Set-off

In the event any amount is due and payable by the Concessioning Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Concessioning Authority of its rights under this Article 21.2.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

21.2.5 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors hall meet to resolve the differences and if they are unable to resolve the same, such dispute shall be resolved by the Concessioning Authority by recourse to the dispute resolution procedure as described in Article 19.

21.3 Compensation for Breach of Agreement

21.3.1 Compensation for Default by the Concessionaire

Subject to the provisions of Article 21.3.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Concessioning Authority by way of compensation, all direct costs suffered or incurred by the Concessioning Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no compensation shall be payable under this Article 21.3.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessioning Authority.

21.3.2 Compensation for Default by the Concessioning Authority

Subject to the provisions of Article 21.3.5, in the event of the Concessioning Authority being in material breach or default of this Agreement at any time after the Date of Award of Concession, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no such compensation shall be payable for any material breach or default in respect of which damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly

attributable to such material breach or default but shall not include loss of revenues from Tariff or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

21.3.3 Extension of Concession Period

Subject to the provisions of Article 21.3.5, in the event that a material breach or default of this Agreement set forth in Article 21.3.2 causes delay in achieving COD or leads to suspension of or reduction in realisation of Tariff, as the case may be, the Concessioning Authority shall, in addition to payment of compensation under Article 21.3.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Concessioning Authority at such time. The decision of the Concessioning Authority in this matter shall be final and binding.

21.3.4 Compensation to be in addition

Compensation payable under this Article 21.3 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including termination thereof.

21.3.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

21.4 Survival of Obligation

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

21.5 Articles to Survive Termination

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

21.6 Joint Responsibility

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

21.7 Several Obligations

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

21.8 Severability

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

21.9 Notices

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

The Concessioning Authority:
The Chairman
Mumbai Port Authority
Port House, 2nd Floor,
Mumbai Port Authority,
S.V. Marg, Ballard Estate, Mumbai - 400 001
Telephone No.: 022-66564011
Email: chairman@mumbaiport.gov.in

The Concessionaire:
The MANAGING DIRECTOR

_____Ltd
_____
_____

Fax No. _____
Email: _____

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

21.10 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.9 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

21.11 Amendments, Modifications or Alterations.

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

21.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Republic of India and subject to the provisions of Article 19, the courts at Mumbai shall have exclusive jurisdiction over all matters relating to or arising out of this Agreement.

21.13 Entire Agreement

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

21.14 Stamp Duty and Other Charges

The Stamp Duty, Registration Charges and all other applicable charges related to the execution of this Agreement shall be borne solely by the Concessionaire.

ARTICLE 22

22 OPERATION OF CAR PARK

22.1 Operation and maintenance of Car Park

22.1.1 The Concessionaire shall construct, operate and maintain or cause to operate and maintain, the Multi level Car Park (including the Reserved Car Park) in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

22.1.2 The Concessionaire shall regulate the use of Car Park by third parties in accordance with the provisions of this Agreement and shall permit non-discriminatory use thereof to all passengers and visitors provided that the Concessionaire may levy charges for the use of the Car Park at such rates as it may determine on market considerations, which shall be published in accordance with Article 8.1(d). The Concessionaire may offer complimentary parking to hotel guests, Marina Club members and berth-holders in accordance with its business plan.

22.1.3 ***The Concessionaire shall:***

(a) ensure that the Car Park is used only for parking of vehicles and for no other purpose, save and except advertising and provision of facilities and amenities for Users; and

(b) not sub-license, assign or in any manner create an Encumbrance on any part of the Car Park except in accordance with the provisions of Article 7.1 (a) xvii

(c) plan the vehicular parking space keeping in mind passenger ease and convenience and the entry and exits are designed to ensure seamless movement of vehicles;

(d) provide parking for different usage like short term, long term and overnight parking;

(e) ensure that adequate parking space shall be provided for two wheelers, cars, private taxis, regular taxis, buses, auto-rickshaws, etc.;

(f) separate parking space for Reserved Parking and parking for the employees working at the Marina or any part thereof;

22.2 Provision for Reserved Car Park

The Concessionaire shall construct, operate and maintain or cause to operate and maintain a reserved car park (the "Reserved Car Park") comprising not less than 25 (twenty-five) car parking slots earmarked for the officers of Customs, Immigration, the Port Health Organisation, security agencies, the Authority and other Government offices functioning at the Marina, and shall facilitate free use thereof by such officers and by persons holding a pass issued by the Authority for that purpose.

22.3 Facilities at Car Park

22.3.1. The Concessionaire shall at all times provide or cause to be provided, at the Car Park, all of the following:

(a) free drinking water outlets at not less than 2 (two) convenient locations on each level;

(b) vending machines installed at not less than 2 (two) convenient locations for dispensing bottled water and popular beverages, hot and cold, at a price which shall not exceed the maximum retail price of each such product as prevalent in the market outside the Marina; and

(c) not less than 2 (two) kiosks or outlets for vending beverages and snacks to users of Car Park, and operated by competing vendors.

22.4 Waiting area for drivers

22.4.1. The Concessionaire shall, adjacent to the entry or exit point of the Car Park, provide a waiting hall for the drivers, with adequate seating facilities and toilets for at least 5% (five per cent) of the parking slots in the Car Park and shall also provide a public address system for passengers and visitors to call their respective drivers to the designated points at the Terminal Building.

22.5 Unauthorised Parking

22.5.1. The Concessionaire may remove any vehicle that is parked at a place not earmarked or authorised for parking, and park such vehicle in the Car Park. If the Concessionaire is not able to shift the vehicle to the Car Park for any reason, it may immobilise the vehicle at or near the spot where it is parked. The Concessionaire shall be entitled to recover Fee for such vehicle and also charge a sum equivalent to 5 (five) times the Fee as the pre-determined and agreed cost of immobilising the vehicle or moving it to the Car Park, as the case may be. For the avoidance of doubt, the Concessionaire shall procure that any shifting or immobilising of vehicles under the provisions of this Article 22.5.1 is undertaken in a manner that does not cause damage to such vehicles.

22.6 Expansion of Car Park

The Concessionaire shall ensure that the parking slots provided in the Car Park are sufficient to meet the requirements of Users. In the event that 80% (eighty per cent) of the parking slots are on an average occupied during the Peak Hours [being the 8 (eight) hours of the day with the highest average occupancy of the Car Park, as recorded by the Concessionaire's parking management system] for any continuous period of 6 (six) months, the capacity of the Car Park shall be deemed to be inadequate and the Concessionaire shall, at its own cost, undertake capacity addition and expansion thereof and construct additional parking space forthwith in accordance with Good Industry Practice and the provisions of this Agreement. Any additional land or FSI required for such expansion may be sought by the Concessionaire under Article 7.1(c)(iii), on payment of charges in accordance with Article 9.3.

ARTICLE 23

23 COMMERCIAL DEVELOPMENT

23.1 Supporting Commercial Infrastructure

The Concessionaire shall be permitted to develop supporting commercial infrastructure for the Marina in the form of Marina Tourism center, Hotel or any other structure related with the development of tourism. The Net Built-Up Area of the Commercial Permitted Facilities (the Hotel and the MLCP with Tourism Business Centre) shall not exceed 53,291.00 sq. mtr. The details of indicative built up area schedule is provided under Appendix 4.

23.1.1 The Concessionaire is free to develop the supporting commercial infrastructure based on their business model but it would be mandatory upon the Concessionaire to construct a hotel rated minimum 5 stars by the Ministry of Tourism, Government of India / Hotel and Restaurant Approval & Classification Committee (HRACC), and having minimum 100 room keys. For such developments, Concessionaire shall have the right to sub-license any or all parts thereof by means of Project Agreements, subject to the prior written approval of the Authority under Article 7.1(a)(xvii) and Article23.6.

23.1.2 The Concessionaire shall undertake or cause to be undertaken at its cost and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of such Development.

23.2 The revenue generated from such Development shall form a part of Gross Revenue.Operation and maintenance of Commercial Development Including Hotel

23.3 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Good Industry Practice in the operation, maintenance and management of Hotel Development and shall make commercial use thereof subject to the provisions of this Agreement and Applicable Laws.

23.4. Restrictions on Hotel Development and Tourism centre and Land Use

23.4.1. The Concessionaire shall procure that Hotel Development and its land use shall at all times be in conformity with Applicable Laws and may include construction and operation of hotels, restaurants, convention centre, training centre, retail shops for passengers and tourists, offices and amenities or analogous uses and any other activities provided as positive list in Appendix 26.

23.4.2. The Concessionaire acknowledges and agrees that it shall not, assign or in any manner create an Encumbrance on any part of Hotel Development except in accordance with the provisions of Article 7 and Article 23.6.

23.5. Restrictions on Floor Space Index (FSI)

Subject to the provisions of the Master Plan, the Floor Space Index (FSI) of Hotel Development shall be the lower of 2 (two) and the limit specified by local authorities under Applicable Laws. The height of any structure to be built on Hotel Development shall not exceed the limit specified by the Authority or Designated GOI Agency, as the case may be, for different zones adjoining. For the avoidance of doubt, the FSI as referred to hereinabove shall be computed with reference to the total area earmarked in the Master Plan as Hotel Development, but excluding the areas reserved for roads, parks and other common facilities and amenities.

23.6. Sub-licensing of Hotel Development

23.6.1. Subject to the provisions of Article 7 and this Article 23, the Concessionaire may sub-license the Project Assets comprising Hotel Development such that the period and validity of such sub-license shall not extend beyond the Concession Period, save as provided in Article 23.7.

23.6.2. Notwithstanding anything to the contrary contained in Article 23.6.1, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of such Development at any time prior to the Appointed Date. Provided, however, that the restraint hereunder shall not apply to advertising or to any other Encumbrance created for a period not exceeding 6 (six) months. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.

23.6.3. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 23.6.2, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of such Development without prior written approval of the Authority, in accordance with Article 7.1(a)(xvii). The Authority shall endeavour to convey its decision within 60 (sixty) days of receiving a notice along with full particulars and documents from the Concessionaire; provided that no approval shall be deemed to have been granted by reason only of the lapse of such period.

23.6.4. The Concessionaire agrees and undertakes that in respect of any sub-licence, assignment or other Encumbrance on any Project Asset forming part of such Development, it is entitled to receive a monthly fee, charge, rent or revenue share, security deposit, premium, loan and advances as the case may be, in accordance with the prevailing market practice. For the avoidance of doubt, the Concessionaire agrees to ensure that the consideration payable to it for any sub-licence, assignment or other Encumbrance shall accrue evenly over the Concession Period and shall be payable no less frequently than once every quarter; The consideration so receivable shall, for the purposes of computation of Gross Revenue, be subject to the Floor Letting Rate under Article 9.2A.

23.7. Rights of sub-licensees after Termination

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-licences for such Development upto the maximum period permissible under Article 2.2, which shall

include the extended period specified in the first Proviso of that Article. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licences and the rights of the sub-licensees shall continue to subsist as if the sub-licences were granted by the Authority, and the Authority shall, for the remaining period of each sub-licence, be deemed to be the grantor of the sub-licence by stepping into such sub-licence in pursuance of the Covenant referred to in Article 7.1(a)(xvi)(d). For the avoidance of doubt and by way of illustration, if the Concessioning Period including the extended period is 45 (forty five) years and the Concession Agreement is terminated prior to the 20th (twentieth) anniversary of the Appointed Date, the tenure of a sub-licence shall extend upto the earlier of the term specified in such sub-licence and the 45th (forty fifth) anniversary of the Appointed Date.

23.8. Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, in respect of such Development, at all times conform to Applicable Laws and the rules, regulations or by-laws made thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

23.9. Commercial advertisement or display

The Concessionaire may undertake or cause to be undertaken commercial advertising or display on such Development in conformity with Applicable Laws and the provisions of this Agreement.

23.10. The concessionaire agrees that all revenues generated will be part of Gross Revenue of the Project Facilities and Services.

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

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

Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. _____ pursuant to Resolution dated _____ of its Board of Directors.

APPENDIX 1

PROJECT SITE

1. Definition of Project Site

The "Project Site" shall mean the aggregate of the following land and water areas, as more particularly delineated in the Project Layout attached to this Appendix:

(a) Marina Water Enclosure (3 Phases)

The total water area of 37.3 Ha is shown in Figure 2 below. The Authority shall develop 424 berths within the enclosed breakwater which shall be handed over to the Concessionaire. The Concessionaire is free to develop Marina in balance water as per their business plan and approved design. Further, Concessionaire shall have exclusive operational control over the entire Marina Water Enclosure of 37.3 Ha.

(b) Land Parcel – A (Victoria Dock)

An area of approximately 4.2 Hectares of land situated at Victoria Dock, to be handed over to the Concessionaire upon the Award of the Project (the "Appointed Date"), as demarcated in the Project Layout attached to this Appendix.

(c) Land Parcel – B (Victoria Dock)

An area of approximately 8900 sq.m of land contiguous with Land Parcel A situated at Victoria Dock, will be handed over to the Concessionaire on Commercial Operations Date, as demarcated in the Project Layout attached to this Appendix. This place will be exclusively used for boat shows, exhibitions and events. No permanent construction will be allowed.

(d) Domestic Cruise Terminal Area

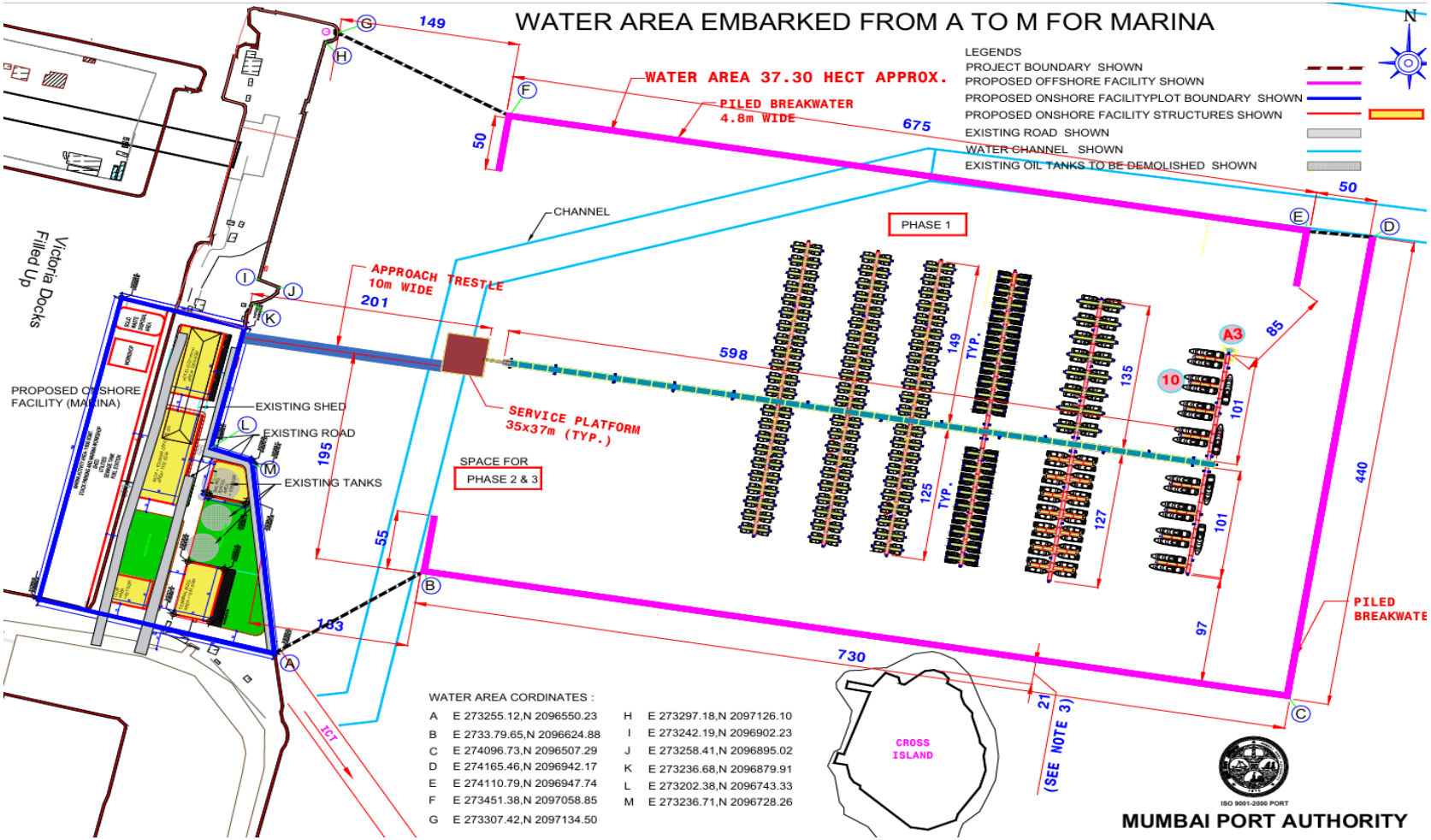
An area of approximately 7,105 sq.m housing 2 storeyed building on footprint of 530 sq.m. is presently operated as the Domestic Cruise Terminal ("DCT"). Presently, this land parcel is given on license and shall be handed over to the Concessionaire upon the expiry of the existing license period, expected to be on or about 01.01.2033 ("DCT Handover Date"). The Concessionaire acknowledges that its rights over this area shall vest only upon the DCT Handover Date and that the Authority shall not be responsible for any delay in handover attributable to the existing DCT concessionaire. There shall be no permanent construction in this area.

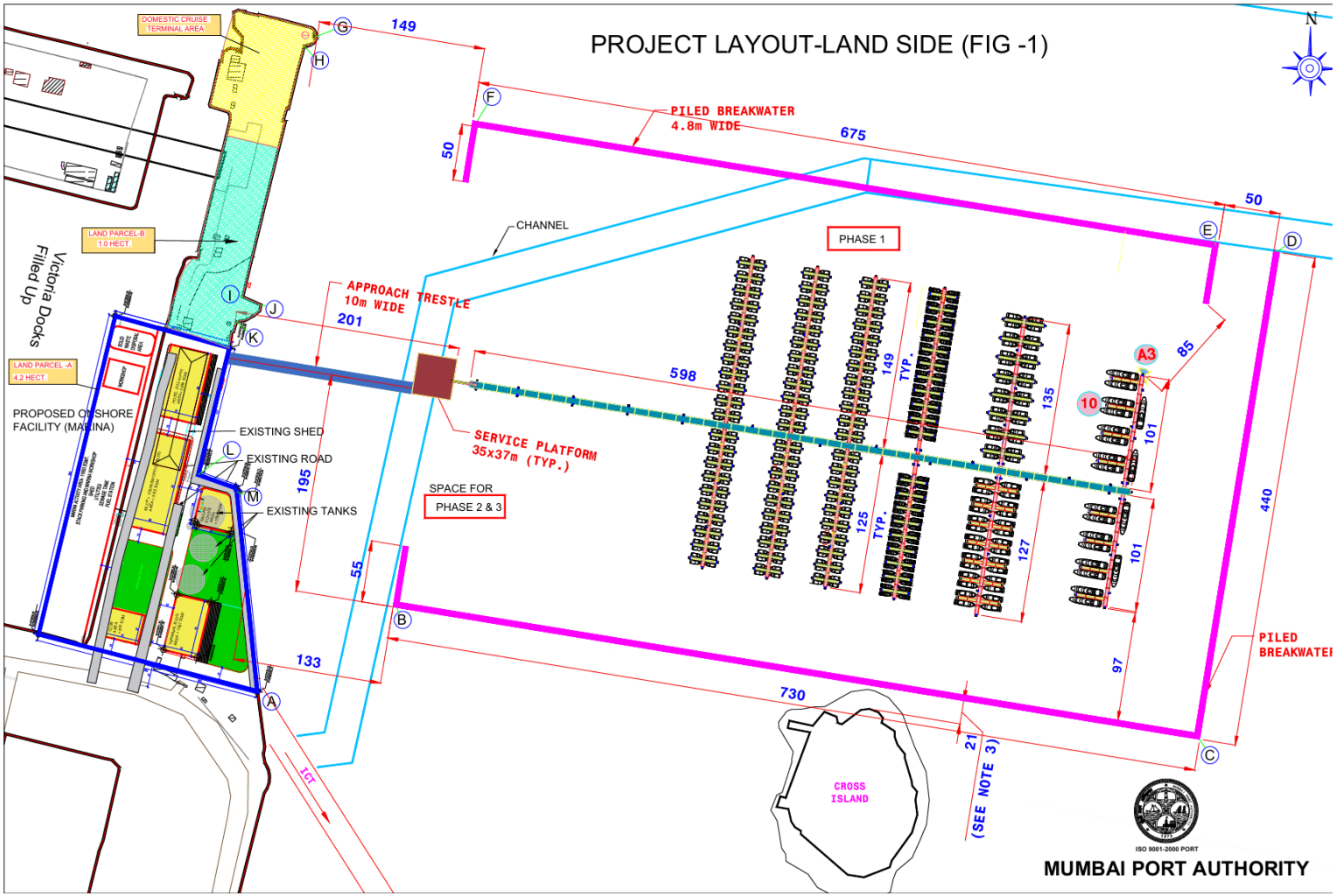
(e) Land Parcel – C (Haji Bunder)

An area of approximately 1.50 Hectares situated at Haji Bunder, with a water frontage the wharf of about 5m abutting the waterfront shall be used as common area by both Port and Concessionaire. The Vessel related charges will be paid directly to the Authority. This area shall be exclusively used for boat repair and supporting infrastructure including shed.

Project Layout – Land Side (Fig-1)

Figure 1 — Project Layout depicting the Project Area, land parcels

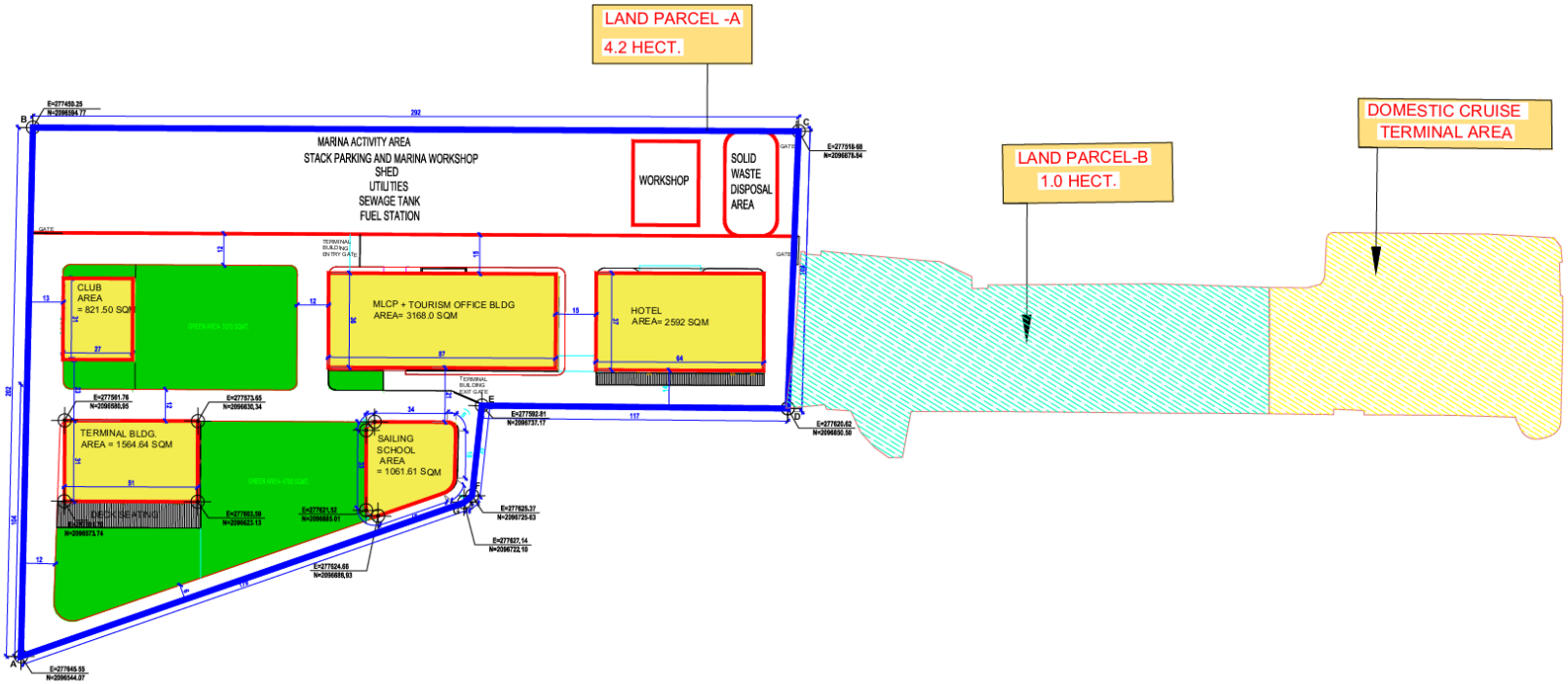



PROJECT LAYOUT-LAND SIDE (FIG -1)
N
DOMESTIC CRUISE TERMINAL AREA
LAND PARCEL-B 1.0 HECT.
LAND PARCEL -A 4.2 HECT.
Victoria Docks Filled Up
PROPOSED ONSHORE FACILITY (MARINA)
EXISTING SHED
EXISTING ROAD
EXISTING TANKS
PILED BREAKWATER 4.8m WIDE
675
50
CHANNEL
PHASE 1
APPROACH TRESTLE 10m WIDE
201
598
SERVICE PLATFORM 35x37m (TYP.)
SPACE FOR PHASE 2 & 3
149
TYP.
135
101
85
A3
10
440
195
55
133
730
125
127
97
21
(SEE NOTE 3)
CROSS ISLAND
ICT
PILED BREAKWATER
ISO 9001-2000 PORT
MUMBAI PORT AUTHORITY

ISO 9001-2000 PORT

MUMBAI PORT AUTHORITY

PROPOSED MARINA ONSHORE FACILITIES



3. Phased Handover Schedule

For clarity, the handover of the Project Area shall be in the following phases:

#	Area	Approximate Size	Handover Trigger
1	Land Parcel – A (Victoria Dock)	4.2 Ha	Appointed Date
2	Land Parcel – B (Victoria Dock)	8,900 sq.m	On COD
3	Land Parcel – C (Haji Bunder)	~1.5Ha	Appointed Date
4	Marina Water Enclosure (within breakwaters)		Upon completion of Piled Breakwater by the Authority
5	Domestic Cruise Terminal Area	7,105 sq.m	DCT Handover Date (in or around 01.01.2033)

4. Boundary Coordinates of the Project Area

The boundary coordinates of the constituent areas of the Project Area are set out below and shall be read together with, and as more particularly delineated in, the Project Layout. The Co-ordinated drawing No. [●], showing the boundary co-ordinates, is enclosed as an Annexure to this Appendix.]

APPENDIX 2

PORT'S ASSETS

The land and water area within the Project Site.

A. Terminal Building at Domestic Cruise Terminal

The terminal building is a reinforced concrete frame structure of G+2 floors with an open terrace and has been provided by the authority in the site area. The total built up area is about ~1472 sq.m.. This terminal has been recently redeveloped to suit the taste and requirements of a cruise terminal building. Flooring, painting, and plastering work on the ground floor has already been undertaken by the authority with the provision of toilets. The building has air conditioning equipment on the ground floor and general lighting. All other equipment and fixtures will be recorded and handed over to the Concessionaire during the trigger date.

B. Existing Shed at 14 Victoria Dock

The existing shed admeasuring ____ is a part of the 4.2 Ha land area. The same shall be demolished by the Authority on or before the Appointed Date.

APPENDIX 3

SUBSTITUTION AGREEMENT

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

AMONGST,

Mumbai Port Authority, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Administrative Building, Mumbai Port Authority, Port Bhavan, 3rd Floor, S.V.Marg, Fort, Mumbai 400001 (hereinafter referred to as **"the Concessioning Authority"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. [●] Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its Registered Office at [●] hereinafter referred to as **"the Concessionaire"** (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns),

AND

YYYY (Financial Institution/ Bank) having its Registered 0ffice/Head Office at [●] hereinafter referred to as **"the Senior Lender"**.

OR

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

WHEREAS,

a) The Concessioning Authority for implementing a Project envisaging '**Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode**' at Mumbai Port, by private sector participation (hereinafter referred to as **"the Project"**), has by the Concession Agreement dated [●] entered into between the Concessioning Authority and the Concessionaire (hereinafter referred to as **"the Concession Agreement"**) has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;
b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Senior Lender/s/Senior Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

"Financial Assistance" means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Senior Lender(s) to the Concessionaire for financing the Project.

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt there under by the Concessionaire for a minimum period of 3 (three) months.

"Senior Lender(s)" means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Senior Lenders' Representative to the Concessionaire, from time to time.

"Residual Concession Period" means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of Article 16.1 of the Concession Agreement.

"Selectee" means a Person proposed by the Senior Lender/Senior Lender's Representative pursuant to this Agreement and approved by the Concessioning Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

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

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

ARTICLE 2
ASSIGNMENT

2.1 Assignment of rights and title

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

ARTICLE 3
SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Senior Lenders/Senior Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof and send a copy to the Concessioning Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in accordance with the provisions of this Agreement.

3.2.3 At any time after the Senior Lenders/Senior Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioning Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioning Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessioning Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Senior Lenders/Senior Lenders' Representative and the Concessionaire, the Concessioning Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Concessioning Authority shall by a notice inform the Senior Lenders/Senior Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days' time to the Senior Lenders/Senior Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

3.3.2 In the event that the Senior Lenders/ Senior Lenders' Representative makes a representation to the Concessioning Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Senior

Lenders/ Senior Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessioning Authority shall either withhold termination and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Senior Lenders/ Senior Lenders' Representative and the Concessionaire, the Concessioning Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.4 Procedure for substitution

3.4.1 The Concessioning Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioning Authority under Clause 3.3.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement. 3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessioning Authority for shortlisting the bidders for award of the Concession; provided that the Senior Lenders/ Senior Lenders'

Representative may represent to the Concessioning Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioning Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Selectee, the Senior Lenders/Senior Lenders' Representative shall request the Concessioning Authority to:

(a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and

(b) novate the Concession Agreement to the Selectee such that the Selectee replaces the Concessionaire and becomes entitled/obligated to all the rights and obligations of the Concessionaire, for the residual Concession Period.

3.4.4 If the Concessioning Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 7 (seven) Days from the date of proposal made by the Senior Lenders/Senior Lenders' Representative, give a reasoned order after hearing the Senior Lenders/Senior Lenders' Representative. If no such objection is raised by the Concessioning Authority, the Selectee shall be deemed to have been accepted. The Concessioning Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessioning Authority, the Senior Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Senior Lenders/Senior Lenders' Representative and the Concessioning Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Senior Lenders' Representative or the Senior Lenders or the Concessioning Authority taken pursuant to this Agreement including the transfer/novation of the Concession Agreement in favour of the Selectee. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Senior Lenders/Senior Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioning Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioning Authority or the Senior Lenders/Senior Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Senior Lenders/Senior Lenders' Representative.

ARTICLE 4
TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 5
TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

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

5.2 Termination when no Selectee is selected

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

5.3 Realisation of Debt Due

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

ARTICLE 6
DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

ARTICLE 7
INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioning Authority and the Senior Lenders/Senior Lenders' Representative harmless against any
and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

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

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting

the same. The Indemnified Party shall provide all cooperation andassistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

ARTICLE 8
GENERAL

8.1 General

(i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.

(ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.

(iii) The expressions "Concessioning Authority", the "Concessionaire", the "Senior Lender" and the "Senior Lenders' Representative", "Selectee" herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.

(iv) This Agreement shall not be affected by reorganisation of any Senior Lender, the Concessionaire or Concessioning Authority, "Selectee" and the successor in interest of the Senior Lender or Concessioning Authority shall have the benefit of this Agreement.

(v) Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessioning Authority and the Senior Lenders/Senior Lender's Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.

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

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

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

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

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

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

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

SCHEDULE A

PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the Lender	**Nature and Amount of Financing Assistance**

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

SIGNED AND DELIVERED ON BEHALF OF
---------- LIMITED
BY: _____
Name:
Title:

SIGNED AND DELIVERED ON BEHALF OF
MUMBAI PORT AUTHORITY
BY: _____
Name:
Title:

SIGNED AND DELIVERED ON BEHALF OF
THE SENIOR LENDERS SETFORTH IN SCHEDULE I
BY: _____
Name:

APPENDIX 4

SCOPE OF WORK

Project Facilities and Services

(Part A — Scope of Work of the Concessionaire; Part B — Scope of Work of the Concessioning Authority)

1. Introduction

1.1 This Appendix sets out, in expanded and detailed form, the Project Facilities and Services to be provided in respect of the Mumbai International Marina (to be promoted and operated as the "Viksit Bharat Mumbai Marina"), and allocates responsibility for them between the Concessionaire and the Concessioning Authority. It is divided into two Parts: Part A describes the Scope of Work of the Concessionaire, and Part B describes the Scope of Work of the Concessioning Authority.

1.2 In this Appendix: (a) capitalised terms used but not defined herein shall have the meanings assigned to them in Article 1.1 (Definitions) of this Agreement, and Article 1.2 (Other References) shall apply to the construction of this Appendix; (b) references to the "Authority" are references to the Concessioning Authority; (c) headings are for ease of reference only and shall not affect construction; and (d) in the event of any inconsistency between this Appendix and the Articles of this Agreement, the Articles shall prevail, and in the event of any inconsistency between the summary in Section 2 (Responsibility Matrix) and the detailed provisions of Parts A and B, the detailed provisions of Parts A and B shall prevail.

1.3 The Concessionaire shall, at its own cost, risk and expense, be responsible for the design, build, finance, construction, equipping, commissioning, operation, maintenance and eventual transfer to the Authority of all works and facilities described in Part A. The Concessionaire shall comply with all Applicable Laws, Applicable Permits, Construction Standards, Operations and Maintenance Standards, and Safety Standards set out in this Appendix and its Annexure.

2. Responsibility Matrix — At a Glance

A high-level summary of which Party is responsible for development versus ongoing operation and maintenance of each major component. Detailed obligations follow in Parts A and B; in the event of any inconsistency, the detailed provisions of Parts A and B prevail over this summary. This matrix is indicative only and creates no obligation independent of Parts A and B. "Concession Period" in this matrix means the Concession Period as defined in Article 1.1.

Facility / System	Development	Operate & Maintain (Concession Period)
Marina — waterside operations & berth services (first phase: 424 yachts, per Appendix 1)	Authority (marine civil works)	Concessionaire

Facility / System	Development	Operate & Maintain (Concession Period)
Marina — waterside operations & berth services : all supporting infrastructure for Marina operation.	Concessionaire	Concessionaire
Expansion of berthing facility beyond 424 yachts -Core Marina Asset	Concessionaire	Concessionaire
Shipyard & Repair Yard --Core Marina Asset	Concessionaire	Concessionaire
Dry Stack (Stack Parking) Vessel Facility--Core Marina Asset	Concessionaire	Concessionaire
Terminal Building, Sailing School, Marina Club- -Core Marina Asset	Concessionaire	Concessionaire
Hotel, F&B, Retail, Nautical Services, Events, Gym, Tourism Business Centre with Multi level Car Parking facility (commercial permitted facilities)	Concessionaire	Concessionaire
Port Electrical Grid (primary) — sourcing, laying of cable and substation as required.	Concessionaire	Concessionaire
Shore Power, Potable Water, Sewage, Bilge Reception, External Lighting, Fire Protection (primary / interface systems)	Concessionaire	Concessionaire
Approach Channel (P&V channel) maintenance dredging till entry point of Marina berthing facility	Existing asset — no development obligation	Authority
Dredging for Marina Basin	Authority (Before Handover)	Concessionaire
Dredging for the expansion of the Marina Basin	Concessionaire	Concessionaire

PART A — SCOPE OF WORK OF THE CONCESSIONAIRE

The Concessionaire's scope of work comprises two broad categories: (i) Mandatory Obligations — facilities and services that the Concessionaire must develop (where applicable), operate and maintain for the full 45-year Concession Period without exception; and (ii) Commercial Permitted Facilities — revenue-generating uses that the Concessionaire may configure flexibly within its business model, subject to Authority approval, in order to cross-subsidise the cost of the Mandatory Obligations. All signage, displays, hoardings and public-facing collateral within the Project Site shall bear the name and logo of the Concessioning Authority alongside that of the Concessionaire, in a form approved by the Authority.

1. Mandatory Obligations of the Concessionaire

1.1 Master Plan Approval

The Concessionaire shall design and submit for approval a comprehensive Master Plan to the Special Planning Authority (SPA) covering the complete land-side project area, including the 4.2 Ha area, the DCT II area, the DCT I area, and the 1.5 Ha Boat Yard at Haji Bunder. Such submission shall be made prior to the commencement of any construction works. The Master Plan shall conform to all applicable statutory, regulatory and planning requirements, and shall be submitted to the Authority and the Independent Engineer simultaneously with its submission to the SPA.

1.2 Demarcation of Mandatory and Non-Mandatory Obligation Spaces

The design and drawings submitted to the Authority for approval shall clearly demarcate and separately identify all Mandatory Obligation spaces and Non-Mandatory Obligation spaces in accordance with this Appendix. The demarcation shall be clearly legible in all plan drawings, layout plans and associated documentation, and shall be maintained and updated by the Concessionaire throughout the Concession Period to reflect any approved variation.

1.3 Revised CRZ and Environmental Clearances

The Authority has procured the Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance for the complete Project area. In the event that the Concessionaire expands, revises or modifies the approved layout or design in any manner for the onshore facilities, or increases the capacity of the Marina Harbour beyond 604 yachts, the Concessionaire shall be solely responsible for procuring all revised, amended or fresh CRZ clearances and EC amendments as may be required for the revised layout of the land-side development, at its own cost and within the timelines prescribed under Applicable Law. Any such expansion or modification shall further be subject to the prior written approval of the Authority and to clearance by the Independent Engineer.

1.4 Project Branding — "Viksit Bharat Mumbai Marina"

The Concessionaire shall be obligated to maintain, promote and advertise the Project at all times under the name "Viksit Bharat Mumbai Marina" with the logo of the Concessioning Authority, throughout the entire Concession Period. The Concessionaire shall ensure that all marketing collaterals, signage, correspondence, digital platforms and public communications consistently reflect the designated

Project name. Any deviation from this naming obligation shall require the prior written consent of the Authority. No intellectual property right in the name "Viksit Bharat Mumbai Marina", or in the Authority's logo, shall vest in the Concessionaire, and all use thereof shall cease upon expiry or termination of this Agreement.

1.5 Marina Infrastructure — Scope and Boundary

The Concessionaire shall operate and maintain the marina infrastructure developed by the Authority, comprising berthing facilities for 424 yachts (first phase) offshore. The breakwater, approach trestle, and floating pontoons with gangways serving the berths are provided by the Authority under Part B of this Appendix; the corresponding drawings are set out in Appendix 1, Annexure 1. The Concessionaire is responsible for installing all operational equipment required to run the marina to the applicable Standards, including (without limitation) firefighting systems, bunkering facilities, and shore power. In particular, the Concessionaire shall:

- expand the marina facility beyond the first-phase 424 berths within the Marina water area forming part of the Project Site in accordance with Article 7.1(a)(xviii) of the Agreement, being free to design and construct such expansion subject to the prior written approval of the Authority, clearance by the Independent Engineer, and compliance with Section 1.3 above;
- install all marina services at each berth, including shore power, potable water, sewage pump-out access, Wi-Fi, lighting, CCTV, service blocks, and all associated infrastructure;
- procure and commission all marine operational equipment, including travel lifts, dry-stack forklifts, mooring RIBs, and all equipment necessary to operate the marina to accredited standards from the COD; and
- provide any other services to yachts and boats, including pilotage, towage, mooring, and maintenance dredging within the marina basin of the licensed premises, provided that pilotage and towage shall be provided only in accordance with Section 1.16 and subject at all times to the statutory authority of the Deputy Conservator.

1.6 Marina Accreditation — TYHA Gold Standard

The Concessionaire shall, through a qualified and internationally experienced marina operator, procure and maintain a minimum of TYHA (The Yacht Harbour Association) 4 Gold Anchor / Gold Standard Certification, or any equivalent internationally recognised marina accreditation or comparable International Marina Standards as may be approved by the Authority, for the complete Project facility. Such certification shall be obtained within twenty-four (24) months of the COD and shall be maintained and renewed throughout the Concession Period. Failure to obtain or maintain such certification shall attract the liquidated damages set out in Appendix 14, and continued failure for a period exceeding twelve (12) months shall constitute a Concessionaire Event of Default.

1.7 Marina Operations — Mandatory Throughout the Concession Period

Standard Operating Procedures (SOP)

The Concessionaire shall, through a qualified and internationally experienced marina operator, develop comprehensive Standard Operating Procedures (SOP) for the overall Marina Project operations in accordance with international standards. The SOP shall be submitted to the Authority for approval prior to the COD and shall, inter alia, cover marina operations, yacht/boat handling, safety, security, emergency response, revenue management and customer service. All inward and outward procedures for yachts and boats within the Marina Harbour shall be conducted and operated strictly in accordance with the directions of the Authority and the approved SOP, including any amendments thereto issued from time to time, and the Concessionaire shall ensure that all personnel engaged in marina operations are trained and certified in accordance with the approved SOP.

Operating Requirements

Throughout the Concession Period, the Concessionaire shall:

- operate the waterside maritime infrastructure of the marina as a fully functional, open-access marina on a continuous, year-round basis, without interruption save for scheduled maintenance windows notified in advance to the Authority;
- provide professional marina management services, including 24-hour, 7-day harbour watch on VHF Channel 16 and operational channels; online and offline berth booking and reservation services; mooring and unmooring assistance; and vessel registration and documentation;
- ensure the marina is accessible to all registered vessels within the applicable size range on a non-discriminatory basis, in accordance with the applicable tariff schedules and the Performance Standards set out in Appendix 14 of the Concession Agreement;
- maintain all marina services — shore power, water, sewage pump-out, Wi-Fi, CCTV, lighting, service blocks, and rescue equipment — in operational condition at all times throughout the Concession Period; and
- submit monthly operations reports to the Authority and the Independent Engineer covering vessel traffic, berth occupancy, revenue, service-quality metrics, and any incidents, in accordance with the reporting requirements of the Concession Agreement and the monitoring arrangements set out in Appendix 17.

1.8 Marina Maintenance — Mandatory for the Concession Period

Throughout the Concession Period, the Concessionaire shall:

- carry out all routine, preventive, corrective and periodic maintenance of the entire marina estate — including floating pontoons, gangways, berth services, operational buildings and all equipment — at the Concessionaire's own cost throughout the Concession Period;
- maintain the marina in good repair and in compliance with the Construction Standards and the Operations and Maintenance Standards set out in the Annexure to this Appendix 4 at all times;

- promptly repair or replace any component of the marina that is lost, damaged, destroyed, or has reached the end of its serviceable life, ensuring no degradation of berth capacity, service quality, or safety standards; and
- carry out all maintenance in a manner consistent with the Concessionaire's obligation to return the Project Facilities to the Authority in good condition at the end of the Concession Period, in accordance with Article 18 of the Concession Agreement.

1.9 Operation and Maintenance of the Marina Harbour — Continuity, KPIs and Performance

The Concessionaire shall operate, manage and maintain the Marina Harbour and all associated land-side facilities, infrastructure and assets forming part of the Project, without interruption, for the entire duration of the Concession Period commencing from the COD (the "O&M Period"). Throughout the O&M Period, the Concessionaire shall:

- operate the Marina Harbour on a continuous, year-round basis in strict accordance with the approved SOP, applicable statutory requirements, directions of the Authority, the Key Performance Indicators (KPIs) and operational standards prescribed under Appendix 14, and the maintenance standards and benchmarks prescribed under Appendix 17, as may be amended from time to time with the approval of the Authority;
- maintain all Project assets, infrastructure, equipment, systems and facilities in a safe, serviceable and fully operational condition in conformity with the maintenance standards, inspection schedules and asset-upkeep obligations set out in Appendix 17, and carry out all preventive, corrective and capital maintenance works as stipulated therein;
- achieve and sustain, at all times, each of the KPIs set out in Appendix 14, including but not limited to KPIs relating to berth utilisation, turnaround time, safety performance, customer satisfaction, environmental compliance and service quality, and submit periodic KPI compliance reports to the Authority in the format and at the frequency prescribed under Appendix 14;
- where the Concessionaire fails to meet any KPI under Appendix 14, or fails to comply with any maintenance standard or obligation under Appendix 17, pay such performance deductions, penalties or liquidated damages as are prescribed under the respective Appendix and the Concession Agreement — it being agreed that persistent non-achievement of KPIs, as defined under Appendix 14, shall constitute a Concessionaire Event of Default entitling the Authority to invoke the remedies available to it under the Concession Agreement;
- ensure that at no point during the O&M Period shall the Marina Harbour cease operations or be abandoned, surrendered or left unmaintained, except to the extent necessitated by Force Majeure events, statutory directions of competent authorities, planned maintenance shutdowns conducted in accordance with the schedule stipulated under Appendix 17 and with prior written intimation to the Authority, or as otherwise expressly permitted under the Concession Agreement;

- comply with all directions, circulars and guidelines issued from time to time by the Authority, DG Shipping, Customs, the Port Health Authority and any other statutory or regulatory body having jurisdiction over the Project;
- ensure adequate staffing, training and certification of all personnel engaged in marina operations throughout the O&M Period, in accordance with the staffing standards and training requirements set out under Appendix 14; and
- at least six (6) months prior to the expiry of the Concession Period, prepare and submit to the Authority a comprehensive handover plan for the Project, and carry out all such rectification, repair, refurbishment and maintenance works as may be directed by the Authority to ensure that the Project assets meet the handover condition standards prescribed under Appendix 17 at the time of transfer to the Authority, in accordance with Article 18 of this Agreement.

Any failure by the Concessionaire to maintain continuous operations of the Marina Harbour, to achieve the KPIs under Appendix 14, or to comply with the maintenance obligations under Appendix 17 during the O&M Period (save for the permitted exceptions set out above) shall constitute a breach of this Agreement, and the Authority shall be entitled to invoke the remedies, performance deductions and termination rights available to it under the Concession Agreement and the relevant Appendices.

1.10 Marina Terminal Building (Mandatory Obligation)

The Concessionaire shall construct, operate, provide and maintain a dedicated Marina Terminal Building in accordance with the design standards and specifications provided by the Authority. There shall be no reduction in the Built-Up Area of the Terminal Building without the prior written approval of the Authority. The Terminal Building shall, at a minimum, provide for the following offices and facilities: (a) Concessionaire offices; (b) Concessioning Authority offices; (c) Customs; (d) Immigration; (e) Quarantine; (f) Port Health Officer (PHO); (g) Tourism Department; (h) Directorate General of Maritime Administration ; (i) Central Industrial Security Force (CISF); (j) Maharashtra Maritime Board (MMB); and (k) such other mandatory statutory offices and regulatory bodies as may be directed by the Authority during the approval stage of the Master Plan. The accommodation of Customs, Immigration, Quarantine and the PHO shall be as approved by their respective authorities.

The office spaces for the Authority, Customs, Immigration, the Port Health Officer (PHO), the Tourism Department and the Directorate General of Maritime Administration, CISF and MMB shall be provided by the Concessionaire to the Authority and the concerned statutory bodies free of charge. The Concessionaire shall, at its own cost, maintain such office spaces and the Terminal Building premises in good, clean and fully operational condition throughout the entire Concession Period, including the provision of electricity, water, air-conditioning, housekeeping, security and data connectivity to those spaces.

1.11 Sailing School (Mandatory Obligation)

The Concessionaire shall construct, operate and maintain a dedicated Sailing School as part of the Project. There shall be no reduction in the Built-Up Area of the Sailing School without the prior written approval of the Authority. The Concessionaire shall at all times maintain a minimum fleet of

ten (10) sail boats in the Sailing School in operational condition for use by trainees and members. The Sailing School shall be accredited by a recognised national or international sailing authority, including the Directorate General of Maritime Administration and/or the Yachting Association of India, and such accreditation shall be obtained within twenty-four (24) months of the COD and maintained throughout the Concession Period.

1.12 Yacht Club (Mandatory Obligation)

The Concessionaire shall design, construct and operationalise a Yacht Club as a Mandatory Obligation component of the Project, in accordance with the approved Master Plan, providing facilities befitting an international-grade marina yacht club. The detailed scope of the Facility Centre Yacht Club (including its commercial area and the mandatory common toilets and medical centre) is set out in Section 2.2, and the Concessionaire's flexibility to configure the Yacht Club within its business model is described in Section 4.4. Notwithstanding that flexibility, the provision of a Yacht Club is mandatory and shall support the marina's 5 Gold Anchor accreditation objectives.

1.13 Non-Discriminatory Access, Membership and Reserved Allocations

1.13.1 Non-Discriminatory Access

The Concessionaire shall provide non-discriminatory access, admission and membership in the Marina Harbour, the Sailing School and the Yacht Club respectively. No person shall be denied access, admission or membership on grounds of race, caste, religion, nationality, gender or any other discriminatory basis. The Concessionaire shall frame and publish a transparent membership and access policy in consultation with the Authority, which policy shall be submitted for the Authority's approval not later than ninety (90) days prior to the COD.

1.13 .2Membership for Authority Officers

The Concessionaire shall provide a minimum of 10 (ten) memberships every year for officers of the Concessioning Authority during the entire Concession Period free of cost. The allocation and nomination of officers for such reserved memberships shall be at the sole discretion of the Authority. For the avoidance of doubt, the memberships provided under this Section 1.13 are the same memberships as those referred to at Section 5(i) of this Part A, and are not additional to them.

1.14 Marina Support Systems and Services

The following systems are integral to marina operations and are mandatory components of the Concessionaire's scope.

a) Shore Fueling and Fuel Tanks

The bunkering plant comprise of a storage area housing the tanks, a point of discharge, and a refuelling station on the quay equipped with three multi-fuel columns and pipelines distributing fuel along the system. The bunkering plant shall be equipped with one petrol tank of 20,000-litre capacity and two diesel tanks of 20,000-litre capacity each, for a total storage capacity of 60,000 litres; provided that the Concessionaire may propose a different capacity, subject to the prior written approval of the Authority and to compliance with the Petroleum Act, 1934, the Petroleum Rules, 2002 and all Applicable Permits. To prevent and contain leakages, the tanks shall be equipped with an

overfill switch to prevent product leakage from incorrect loading operations, and a cladding or equivalent system for underground pressure pipes to guarantee retrieval of any accidental leakage.

b) Solid Waste and Waste-Oil Recycling

Waste quantities are estimated based on those produced by boats, the Basic Marina Ancillary facilities, commercial activities, and the Facility Centre Yacht Club. For waste management, the Concessionaire shall:

- draw up a cleaning-services and waste-collection regulation governing daily disposal of wet and non-recyclable waste (including where necessitated by odour control), regular cleaning and tidying of open spaces, planned collection of solid and special wastes, and a strict zero-waste-to-sea-water policy — non-compliance with which constitutes non-performance of the Concessionaire's obligations under the Concession Agreement;
- guarantee rodent control at least three times a year using baits, in compliance with Applicable Law;
- maintain, clean and manage toilets and hygiene services, with one, two or three cleaning shifts planned during peak hours and continual inspection every 30 minutes to limit critical situations;
- install a minimum of two rows of dumpsters along the Walkway — one to the North and one to the South — accessible to collection and transportation trucks; and
- install two recycling points along the Walkway for collection and disposal of special wastes (exhausted oils, oil bins, rags and mops, used batteries), with toxic waste collected by a specialised, authorised firm holding a valid authorisation under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The Concessionaire shall further install a water-cleaning and de-pollution installation to treat accidental oil spills, solid floating wastes, and wastes produced by vessels; solid floating wastes shall be collected daily by a harbour operator, with absorbers used for the quick and efficient treatment of accidental oil spills.

c) Sewage and Bilge Water Management

To prevent spillage into open sea or the harbour, the Concessionaire shall provide a depression (vacuum) plant to pump out wastes from vessels, with the required depression produced by a liquid-ring pump. A vacuum of 0.5 bar absolute shall be maintained at all times in the pumping columns, the piping system, and the collecting tanks. Wastes shall be held in storage reservoirs until transferred for final treatment, by type:

- sewage waters: discharged to sewers by electric pump;
- bilge waters: de-oiled to an oil content below 5 mg/l, then discharged to sewers by electric pump; and
- exhausted oils: stored in a watertight tank and periodically disposed of by a specifically authorised firm.

The pump-out plant shall connect to the marina's sewage discharge outlet network , which in turn connects to the STP/ETP to be set up by the Concessionaire. All discharges shall comply with the consent conditions issued by the Maharashtra Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and with MARPOL Annex IV.

d) Water Supply and STP/ETP treated water

The marina shall be served by two separate water networks: one for potable water and sanitary uses, and one for non-potable water serving vessel cleaning, yard cleaning, green-area irrigation, and as a reserve and top-up for the firefighting system.

e) Firefighting

The firefighting plant shall be independent of the potable and non-potable water conveyance systems. It shall be seawater-powered through an electric pump and a gasoil (backup) pump, with a reservoir constructed in reinforced concrete and supplied alternatively by seawater or the non-potable water network. Portable powder extinguishers (minimum 50 kg charge, fire-resistance classes A, B1 and C) shall be provided at the head of each pontoon, with water hydrants placed at distances complying with the National Building Code of India, 2016 (Part 4), IS 3844, NFPA 303 and the requirements of the Chief Fire Officer and the Fire Adviser, Government of India.

f) Electricity and Lighting

Electric supply within the harbour and buildings shall be drawn from: a Medium Tension/Low Tension substation (MT stepped down to LT via transformers); and a privileged supply backed by an Uninterruptible Power Supply (UPS) guaranteeing continuous, uninterrupted service to all auxiliaries and users requiring continuous power, including in emergencies. The Concessionaire shall arrange sufficient power and illumination at the marina, complying with the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023, IS 732, IS 3646 and, in respect of berth pedestals and shore-power distribution, IEC 60364-7-709 or AS/NZS 3004.1 or an equivalent standard approved by the Authority.

g) Security Systems

- access control boxes — four in number — positioned to the North of the marina, to the East at the Walkway, to the West at the Marina Ancillary Centre, and to the South at the Dry stack area , or such other number and locations as the approved Port Facility Security Plan may require;
- video surveillance: 22 cameras in total (3 with 90° viewing angle, 13 with 180° viewing angle, and 6 with 360° viewing angle), mounted on lampposts along the Walkway for continuous monitoring of pontoons and moored vessels, with a control room located at the Marina Ancillary Centre, it being clarified that these are minimum numbers and that the coverage, camera types and retention requirements of Section 1.16.6 shall prevail s; and
- trained security personnel: a minimum of 8 people, comprising 4 stationed at access points, 2 patrolling continuously around the marina, and 2 in support roles — the Concessionaire being free to deploy additional security personnel as it considers necessary, and being obliged to deploy such additional personnel as the approved Port Facility Security Plan or the Port Facility Security Officer may require under Section 1.16.3.

h) Signage and Hoarding

Sufficient signage shall be installed at appropriate intervals and locations across the marina to guarantee security and the orderly flow of vehicles, pedestrians and cyclists, and to indicate non-authorised activities. This includes access signage (vehicular, floating pontoon, and pedestrian), circulation signage, safety signage, directional signage, prohibited-activity signage, and other informative signage. All signage shall be bilingual in English and Marathi, and shall bear the logo of the Concessioning Authority in accordance with the introductory paragraph to this Part A.

i) Residual Obligation

The Concessionaire shall carry out all other activities, over and above the mandatory activities described above, that are necessary to enable the smooth and efficient operation of the marina to the Performance Standards set out in Appendix 14, at its own cost and without any claim against the Authority.

1.15 Safety, Risk and Indemnity

The Concessionaire shall, throughout the entire Concession Period, be solely responsible for safety and risk management within the Project Area. The Concessionaire shall indemnify, defend and hold harmless the Authority against any and all claims, demands, losses, damages, liabilities, costs and expenses arising out of or in connection with any loss of life, personal injury, accident of any nature, or operational risk occurring within, or arising from the operation of, the Project Area, save to the extent that the same arises from the gross negligence or wilful misconduct of the Authority . This indemnity is without prejudice to, and shall be read together with, the indemnity provisions of Article 19 of this Agreement.

It shall be the sole liability and responsibility of the Concessionaire to prevent accidents and to take all necessary precautions and preventive measures within the Project Area. In the event of any accident or emergency within the Project Area, the Concessionaire shall promptly respond and make all necessary arrangements — including emergency response, rescue, medical assistance and remedial measures — in accordance with Applicable Laws, the approved SOP, and the Safety Standards set out in this Appendix and its Annexure, and shall report every such accident or emergency to the Authority and the Deputy Conservator immediately and in writing within twenty-four (24) hours.

1.16 Marine, Navigational, Safety and ISPS Compliance

In the interests of marine safety and navigational safety, and pursuant to the statutory powers of the Marine Department headed by the Deputy Conservator, the Concessionaire shall comply with the requirements set out in this Section 1.16 throughout the Concession Period.

1.16.1 ISPS Code Compliance

The Concessionaire shall at all times comply with:

- International Ship and Port Facility Security (ISPS) Code;
- Merchant Shipping (Maritime Security) Rules, 2004;
- DG Shipping Maritime Security Guidelines;

- Major Port Authorities Act, 2021;
- All security directions issued by Mumbai Port Authority.

as amended/updated from time to time.

1.16.2 Statutory Authority of Deputy Conservator

The Deputy Conservator, Mumbai Port Authority shall retain overriding statutory authority over all matters relating to navigation, pilotage, vessel traffic management, marine safety, port security, emergency response, marine pollution prevention and vessel movements within Port Limits.

Any directions issued by the Deputy Conservator in discharge of statutory functions shall be binding upon the Concessionaire.

1.16.3 Port Facility Security Plan (PFSP)

The Concessionaire shall ensure that:

- the Concessionaire shall prepare the Port Facility Security Plan at its own cost and responsibility;
- the Plan shall be prepared in consultation with the Port Facility Security Officer (PFSO), MbPA, and submitted by the Concessionaire for approval by the Designated Authority under the Merchant Shipping (Maritime Security) Rules;
- annual / renewal / internal review and all other statutory audits shall be mandatory;
- no amendment shall be made without prior approval of the PFSO and the Designated Authority;
- wherever the approved Port Facility Security Plan (PFSP) stipulates the deployment of specified categories or minimum strength of security personnel, including CISF personnel wherever mandated by the Competent Authority or applicable statutory provisions, the Concessionaire shall be solely responsible for ensuring such deployment and for meeting all associated statutory and operational requirements. However, at the request of the Concessionaire and subject to applicable Government policy, statutory approvals and availability, Mumbai Port Authority may facilitate or arrange the deployment of CISF personnel and/or provide MbPA security personnel or other security assistance, as considered appropriate. All expenditure, including deployment charges, administrative overheads, statutory levies and any other incidental costs incurred on account of such deployment or assistance, shall be borne entirely by the Concessionaire and reimbursed to Mumbai Port Authority on a chargeable basis in accordance with the prevailing Government orders, CISF norms (where applicable), and the terms, conditions, rates and policies of Mumbai Port Authority, as amended from time to time.

1.16.4 Security Levels

Whenever Port Security Level is increased from Security Level 1 to Level 2 or Level 3, the Concessionaire shall immediately implement all additional security measures directed by the Deputy Conservator/PFSO without any claim for compensation or extension of time.

1.16.5 Access Control

The Marina shall maintain ISPS compliant access control systems including:

- Biometric access;

- RFID cards;
- Visitor management system;
- Vehicle screening;
- Automatic Number Plate Recognition;
- Smart boom barriers;
- Security frisking facilities;
- or such other systems as may be prescribed in the approved PFSP.

The Deputy Conservator/PFSO shall have unrestricted supervisory authority over all access control arrangements.

1.16.6 CCTV and Surveillance

The Concessionaire shall provide and maintain:

- complete CCTV coverage of the marina;
- PTZ cameras;
- Thermal cameras where necessary;
- AI-enabled video analytics;
- Facial recognition technology, subject to applicable law, including the Digital Personal Data Protection Act, 2023;
- minimum 90-day recording;
- remote live access to Mumbai Port Authority Security Control Room;
- and such other measures as may be prescribed in the approved PFSP.

1.16.7 Marine Security Patrol

The Concessionaire shall maintain:

- night surveillance;
- perimeter monitoring;
- floating barriers;
- and such other measures as may be prescribed in the approved PFSP.

Patrol schedules shall be coordinated with the Deputy Conservator / PFSO.

1.16.8 Vessel Entry Clearance

No vessel shall enter or occupy the Marina unless:

- prior arrival information has been submitted;
- ownership details have been verified;

- crew and passenger manifests have been furnished;
- Customs, Immigration and Port Health formalities have been completed wherever applicable;
- permission has been granted by Mumbai Port Authority wherever required;
- and such further conditions as may be prescribed in the approved PFSP have been satisfied, in accordance with the Merchant Shipping (Regulation of Entry of Ships into Ports, Anchorages and Offshore facilities) Rules, 2012 implemented by the Indian Directorate General of Maritime Administration.

1.16.9 VTMS Integration

Every vessel arriving at or departing from the Marina shall report to Mumbai Port VTMS.

All vessel movements shall remain under the operational control of the Deputy Conservator through the VTMS.

1.16.10 Navigation Control

The Concessionaire shall not regulate, control or authorize navigation of vessels within Port Limits. All navigational directions shall remain exclusively with Mumbai Port Authority through the Deputy Conservator.

1.16.11 Pilotage

Where pilotage is compulsory under applicable regulations or as directed by Mumbai Port Authority, the Concessionaire shall ensure compliance. No exemption shall arise merely because the vessel is operating within the Marina.

1.16.12 Tug Assistance

Movement of mega yachts or vessels requiring tug assistance shall be carried out only in accordance with directions issued by the Deputy Conservator / Dock Master (Marina) through VTMS.

1.16.13 Navigational Aids

Installation, relocation or removal of:

- buoys;
- beacons;
- AIS Aids to Navigation;
- navigational marks,

within or in the vicinity of the Marina shall be undertaken only with the prior written approval of the Deputy Conservator and in accordance with the requirements of the Directorate of Lighthouses and Lightships and IALA recommendations. The Concessionaire shall bear the cost of all such aids to navigation as the Deputy Conservator may require in consequence of the Marina.

1.16.14 Emergency Response

The Concessionaire shall prepare and maintain an approved Marina Emergency Response Plan covering:

- fire;

- explosion;
- collision;
- allision;
- grounding;
- sinking;
- oil spill;
- bomb threat;
- terrorist attack;
- cyclone;
- tsunami;
- medical emergency;
- mass casualty incidents.

The Plan shall be approved by the Competent Authority and submitted to the Deputy Conservator, and shall be reviewed and updated at least once in every twelve (12) months.

1.16.15 Oil Spill Preparedness

The Marina shall maintain minimal Oil Spill Response capability as directed by the Director, Pollution Control, MbPA which may include:

- oil booms;
- absorbents;
- trained responders.

The response plan shall integrate with the Mumbai Port Authority Oil Spill Contingency Plan and the National Oil Spill Disaster Contingency Plan of the Indian Coast Guard.

1.16.16 Search and Rescue

The Concessionaire shall maintain:

- rescue boats;
- rescue equipment;
- trained rescue personnel;
- emergency communication systems.

Search and Rescue operations shall be coordinated with the Deputy Conservator and other statutory agencies.

1.16.17 Dangerous Goods

Storage or handling of:

- explosives;
- petroleum products;
- LPG;
- LNG;
- hazardous cargo;

shall not be permitted except with prior written approval of Mumbai Port Authority, provided that the bunkering plant established under Section 1.14(a) shall be deemed approved subject to the Concessionaire holding all Applicable Permits.

1.16.18 MARPOL Compliance

The Concessionaire shall establish adequate reception facilities for:

- garbage;
- sewage;
- bilge water;
- oily waste;
- sludge;

in compliance with MARPOL requirements and the Merchant Shipping (Prevention of Pollution from Ships) Rules, as in force from time to time.

1.16.19 Diving / Hot Work Operations

No underwater inspection, hull cleaning, salvage, diving operations or hot work shall be undertaken without prior permission of the Deputy Conservator.

1.16.20 Emergency Berthing Rights

Mumbai Port Authority shall retain overriding rights to requisition any berth or marina facility for:

- Disaster Response;
- National emergencies.

Any such requisition shall be exercised for the minimum period reasonably necessary, and the consequences thereof shall be governed by the Force Majeure provisions of this Agreement.

1.16.21 Security Drills and Exercises

The Concessionaire shall conduct:

- quarterly ISPS drills;
- annual full-scale security exercises;
- oil spill response exercises;
- fire drills;

- bomb threat exercises;
- active attacker response exercises;
- cyclone preparedness exercises.

The Deputy Conservator/PFSO shall have the authority to witness, supervise and evaluate such drills.

1.16.22 Overriding Statutory Authority

Notwithstanding anything contained elsewhere in this Agreement, Mumbai Port Authority shall retain overriding statutory authority over navigation, pilotage, vessel traffic management, marine safety, port security, marine environmental protection, emergency response, dredging standards, pollution prevention, hydrographic requirements and all matters affecting the safe and secure operation of the Port. Any directions issued by the Deputy Conservator, Port Facility Security Officer or any other duly authorised officer of Mumbai Port Authority in discharge of statutory responsibilities shall be final and binding upon the Concessionaire. Compliance with such directions shall not entitle the Concessionaire to claim any compensation, damages or extension of time except where expressly provided under this Agreement.

2. Onshore Facilities to be Constructed by the Concessionaire

The Concessionaire will be allotted a plot of approximately 4.2 hectares, with the layout shown in Appendix 1. The Authority has tentatively finalised a layout for each activity; this is indicative only, and the Concessionaire is free to adopt its own layout for the construction of facilities suited to its business plan, subject to Authority approval. However, there shall be no reduction in the Built-Up Area (BUA) for the Terminal Building and the Sailing School without prior Authority approval. The Terminal Building shall accommodate the offices and facilities listed at Section 1.10 of this Part A, as approved by their respective authorities.

The Total Built-Up Area permissible is 1,06,573.80 sqm, and the Net Built-Up Area permissible — after allowing for the Recreation Ground, car park, roads, Recreation ground and similar deductions — is 70,180.04 sqm. The tentative areas allotted to each structure, together with Net BUA, are set out below. Of the Net BUA of 70,180.04 sqm, 53,291.00 sqm comprises the Commercial Permitted Facilities referred to in Article 23.1 of this Agreement (being the Hotel Building and the MLCP with Tourism Business Centre).

2.1 Indicative Built-Up Area Schedule

Sr.	Structure	Configuration	Plot Area (m^2)	Net BUA (m^2)
01	Terminal Building	G + 2	1,564.64	3,706.44
02	Hotel Building	G + 17 (314 rooms)	2,592.00	23,294.87
03	Yacht Clubhouse	G + 6 (7 rooms)	821.50	4,658.66
04	MLCP + Tourism Business Centre	G + 18	3,168.00	29,996.08
05	International Sailing School	G + 2	1,061.61	1,841.76
06	Green Space / Landscape Area (RG-1, RG-2, RG-3)	Ground	9,823.63	—
07	Stack Parking for Yachts	G + 2	2,268.00	4,872.15
08	Fuel Station	Ground	280.00	—
09	Sub-Station	Ground	700.00	—
10	Utility Area (ETP, STP & Solid Waste Management)	Ground	308.00	—
11	Common Ground Water Storage Tank	—	—	—
12	Elevated Storage Reservoir	—	—	—
13	Workshop	G + 1	1,852.90	1,785.08
14	Security Building	Ground	25.00	25.00
	Total Net BUA Proposed			70,180.04 m^2

2.2 Facility Centre — Exclusive Marina Club,

The Concessionaire shall provide a Facility Centre Exclusive Marina Club at the Marina Ancillary Facility Centre, as per the schematic layout in Annexure 2 of this Appendix. The Concessionaire is free to design the Facility Centre Yacht Club, including its Commercial Area, subject to Authority approval. Facilities may include — without limitation — reception, security area, office area, lounge, reading room, restaurant and coffee shops, hotel, commercial offices, business centre, gym with locker room, storage area services, health club and spa, and swimming pool. It is, however, mandatory for the Concessionaire to provide common toilets and a medical centre with emergency facilities within the Facility Centre Yacht Club, the medical centre to be staffed and equipped to deal with the medical emergencies contemplated by Section 1.16.14 during all hours in which the Marina Harbour is open.

2.3 Shipyard and Repair Yard — Development, Operation and Maintenance

The Shipyard and Repair Yard is a Mandatory Obligation and shall be designed, constructed, operated and maintained by the Concessionaire throughout the 45-year Concession Period. It is integral to the viability of the marina as a complete marine-services destination and shall not be discontinued, sub-let for non-marine use, or reduced in capacity without the Authority's prior written approval. The Concessionaire shall:

- design and construct a dedicated Shipyard and Repair Yard facility of approximately 15,000 sq.m. of hardstanding, with structural reinforced-concrete pavement rated for 200-tonne travel lift operations, heavy vehicle loads, and crane operations;
- design and construct two dedicated travel-lift operating corridors (each approximately 1,200 sq.m., totalling approximately 2,400 sq.m.) with guide rail systems, drainage, bunding, and structural hardstanding rated for the stated travel-lift capacities;
- procure and commission one travel lift of 75-tonne capacity and one travel lift of 200-tonne capacity, with all associated guide systems, electrical connections, controls and safety features;
- provide all infrastructure necessary for vessel servicing and repair operations, including power outlets, water supply, waste containment, an oil/water separator, adequate lighting, and security fencing around the yard perimeter;
- construct the Shipyard to heavy-industrial pavement specifications in accordance with applicable IS standards for industrial structures and machinery foundations;
- operate the Shipyard and Repair Yard as an active marine repair and maintenance facility for the full 45-year Concession Period, providing haul-out and launching services, vessel storage on hardstanding, and facilities for vessel repair and maintenance;
- make both travel lifts (75T and 200T) available for public use on a non-discriminatory, tariff-regulated basis, for all vessels within their rated capacities;
- permit licensed marine engineers, electricians, chandlers and other marine trade contractors to carry out repair and maintenance works within the Shipyard, under appropriate access and safety agreements;

- maintain all environmental protection measures within the Shipyard at all times — including bunding, drainage separation, waste-oil collection, and anti-fouling-paint containment — in compliance with the CRZ Notification, 2019 and applicable environmental conditions;
- maintain the Shipyard hardstanding, travel-lift infrastructure, and all associated equipment in serviceable and safe condition throughout the Concession Period, carrying out repairs and resurfacing as necessary;
- maintain and service both travel lifts in accordance with manufacturer recommendations and applicable IS/ISO standards for lifting appliances, ensuring all statutory inspections and certifications remain current at all times, ; and
- replace travel lifts or major components as required to maintain operational capacity and safety standards throughout the Concession Period.

2.4 Dry Stack (Stack Parking) Vessel Facility — Development, Operation and Maintenance

The Dry Stack Vessel Parking Facility (also referred to as the Stack Parking facility) is a Mandatory Obligation and shall be designed, constructed, operated and maintained in accordance with the approved Master Plan and the standards prescribed by the Authority, and kept in continuous operation for the full 45-year Concession Period. The Concessionaire shall:

- design and construct the Dry Stack Vessel Parking Facility, providing vessel storage capacity for approximately 210 vessel positions on racking systems;
- construct the facility with heavy-duty industrial steel framing, a reinforced-concrete floor slab rated for forklift wheel loads, vertical clearances appropriate to the vessel size range, forklift manoeuvring aisles, and integrated fire-suppression infrastructure connected to the Concessionaire's primary fire protection system;
- procure and commission negative-lift marina forklift(s) of appropriate capacity for the vessel mix, with all required charging infrastructure and maintenance facilities;
- provide security fencing, access control, CCTV coverage and appropriate signage for the facility;
- operate the Dry Stack Vessel Parking Facility as an active vessel storage service for the full Concession Period, providing launching and retrieval services during marina operating hours;
- make dry-stack storage available to all vessel owners on a non-discriminatory, tariff-regulated basis, for vessels within the capacity of the racking system and forklift equipment;
- provide a launch-on-demand or pre-booked launch service with a target response time consistent with TYHA Gold Anchor service standards or equivalent International Marina Standards;
- maintain the Dry Stack building structure, racking systems, and all forklift equipment in safe and operational condition throughout the Concession Period, in accordance with manufacturer recommendations and applicable IS/ISO standards; and

- replace forklifts or major racking components as required to maintain full operational capacity and safety standards.

3. Operation and Maintenance of the Entire Marina Estate

In addition to the specific Mandatory Obligations described above, the Concessionaire shall be solely responsible for the integrated operation and maintenance of the entire marina for the full 45-year Concession Period, covering all facilities developed under Part A of this Appendix — both Mandatory Obligation components and Commercial Permitted Facilities. The Concessionaire shall:

- operate all facilities across the marina estate — waterside marina, shipyard, dry stack, commercial facilities, public promenade, car park, and all associated infrastructure — in an integrated manner, as a unified marina destination;
- maintain all buildings, structures, civil works, marine structures, mechanical and electrical plant, and equipment across the entire estate in good repair, in compliance with the Construction Standards and the Operations and Maintenance Standards set out in the Annexure;
- manage all sub-concessionaire and tenant relationships, lease agreements, and operational interfaces within the Project Site throughout the Concession Period, ensuring sub-concessionaire operations remain consistent with the overall standards and reputation of the marina;
- ensure all statutory inspections, certifications, safety assessments, and regulatory compliance checks are conducted and kept current for all components of the marina estate throughout the Concession Period;
- maintain all fire protection systems, safety equipment, emergency response capabilities, and environmental management systems across the entire marina estate at all times; and
- return the entire marina estate — including Mandatory Obligation facilities and Commercial Permitted Facilities — to the Authority at the end of the Concession Period in good condition, free of encumbrances, and with all plant and equipment in working order, in accordance with Article 18 of the Concession Agreement.

No sub-concession, lease, licence or other arrangement entered into by the Concessionaire shall relieve the Concessionaire of any obligation under this Appendix or the Concession Agreement, or extend beyond the Concession Period, save as provided in Article 23.7 of the Agreement. All the Mandatory obligation (CORE MARINA ASSET) specified above, shall be managed by the Concessionaire directly not be sublet to any third party.

4. Commercial Permitted Facilities

The Commercial Permitted Facilities listed below are authorised by the Authority to enable the Concessionaire to generate revenues that cross-subsidise and offset the cost of developing, operating and maintaining the Mandatory Obligation components over the Concession Period. The area schedules and typologies referenced are based on the Authority's preliminary designs and serve as a reference baseline only — the Concessionaire may reconfigure, expand, reduce, or reposition these uses within the Project Site in line with its business model, subject to obtaining all necessary

permissions, and provided that no such reconfiguration shall reduce the Built-Up Area of, or otherwise derogate from, any Mandatory Obligation, or permit any use outside the positive list at Appendix 26.

The net built up area of the Commercial Permitted facilities shall not exceed 53,291 sq. mtr without prior written approval and subject to applicable charges.

4.1 Five-Star Rated Hotel

- The Concessionaire may redesign the hotel in terms of room count (minimum 100 keys of 5-star category or above), category, building configuration, and operational model (self-operated, international brand management agreement, or sub-concession), in line with its business model;
- the Concessionaire shall obtain all necessary statutory permissions for hotel construction and operation — including building plan approvals, fire NOC, health and sanitation licences, tourism department registrations, and all other applicable authorisations and permits— entirely at its own cost; and
- once developed, the hotel forms part of the marina and shall be operated and maintained by the Concessionaire (or its sub-concessionaire)for the Concession Period, consistent with the obligations described in Section 3 above.

That area shall be used only for economic activities falling within the positive list at Appendix 26. Hotel development shall be undertaken in conformity with the specifications and standards set forth in Appendix 14, and the Hotel shall be of 5-star category or above with a minimum of 100 room keys in accordance with Article 23.1.1 of this Agreement.

4.2 Restaurants and Food & Beverage Outlets

- The Concessionaire may redesign the restaurant and F&B offering in terms of cuisine mix, format (fine dining, casual, food hall, bar), configuration, number of outlets, and operational model (self-operated or sub-concession to F&B operators); and
- the Concessionaire shall obtain all necessary FSSAI licences, eating-house permits, liquor licences (if applicable), fire NOC, and all other statutory permissions for F&B operations.

4.3 Retail Marina Village

- The Concessionaire may redesign the retail area in terms of tenant mix, format, and configuration, and may sub-let individual retail units to third-party tenants, subject to Section 3 of this Part A and to the Concessionaire remaining solely responsible to the Authority; and
- retail operations shall comply with all applicable trade-licence and local municipal requirements.

4.4 Marina Club

- The Concessionaire may redesign the Marina Club in terms of membership model, F&B offering, events programming, and building configuration, in line with its business and branding strategy, subject always to Section 1.13 (Non-Discriminatory Access, Membership and Reserved Allocations); and

- at a minimum, the Marina Club shall provide facilities appropriate for a marina of international standards, including member lounges, changing rooms, dining, and a bar, and shall support the marina's 5 Gold Anchor accreditation objectives. The provision of the Yacht Club remains a Mandatory Obligation under Section 1.12.

4.5 Nautical Services Building

- The Concessionaire may redesign the Nautical Services facility and is encouraged to attract leading nautical retail, charter operators, and marine-services businesses as sub-concessionaires or tenants.

4.6 Multi-Level Car Parking Structure

- The Concessionaire may design the parking structure in terms of levels, layout, and capacity, subject to compliance with parking demand generated by the overall marina estate and applicable building regulations;
- the Concessionaire may operate the car park on a paid basis and is responsible for all car-park management, maintenance, and statutory compliance, the tariff for which shall be notified to the Authority.
- The parking structure shall provide, as a minimum, the number of parking spaces required for the development under the Development Control and Promotion Regulations for Greater Mumbai, 2034, as computed on the approved Master Plan. As per the proposed development, a minimum of 1200 slots car parking facility need to be created.

4.7 Event and Exhibition Area

- The Concessionaire may redesign the event and exhibition area in terms of clear span, configuration, and operational format (boat shows, exhibitions, concerts, private events), subject to the Authority's prior approval of any event likely to affect port security, navigation or vessel movements, and to Section 5(iv) of this Part A.

4.8 Gym and Crew Welfare Facilities

- The Concessionaire may redesign this facility in terms of fitness offering, wellness services, and crew welfare provisions.

4.9 Other Commercial Uses

- The Concessionaire may replace or propose additional commercial uses within the Project Site that are consistent with the character and standards of a world-class marina destination, subject to its business plan and compliance with all Applicable Laws and the CRZ Notification, 2019, and subject to the Authority's prior written approval and to the positive list at Appendix 26; and

- permitted additional uses may include — without limitation — water-sports facilities, boat-charter operations, marine-tourism services, spa and wellness facilities, children's recreational facilities, and waterfront event spaces.

5. Facilities to be Provided to the Authority

The Concessionaire shall provide the following facilities to the Concessioning Authority free of cost throughout the Concession Period:

(i) 10 (ten) complimentary memberships of the Yacht Club in each year of the Concession Period, being the same memberships as those referred to at Section 1.13 of this Part A and not additional to them;

(ii) two (2) suites at the five-star Hotel, free of charge, for an aggregate of 100 (one hundred) room-nights in each calendar year, on an American Plan / full-board basis, subject to reasonable advance booking;

(iii) Reserved Yacht Parking Slots for the Authority

The Concessionaire shall reserve a minimum of three (3) dedicated yacht/boat parking slots, for the Concessioning Authority, free of cost, each capable of accommodating a minimum 10-metre (10 m) yacht/boat, in both the Marina Harbour and the Stack Parking facility during the entire Concession Period. Such slots shall be maintained in an accessible and operational condition at all times, it being clarified that three (3) slots shall be reserved in the Marina Harbour and a further three (3) slots in the Stack Parking facility.

(iv) space for Mumbai Port Authority events on at least 15 (fifteen) days in each calendar year, in a banquet hall of not less than 200 (two hundred) persons' capacity and/or in open space, on dates to be notified by the Authority with reasonable advance notice; and

(v) 100 (one hundred) hours of yacht sailing per calendar year for the Authority's use, including crew, fuel and insurance.

The facilities under this Section 5 shall be provided at no cost to the Authority and shall not be set off against the Revenue Share payable under Article 9.

PART B — SCOPE OF WORK OF THE AUTHORITY

The Authority shall be responsible for the design, construction, commissioning and handing over of the Maritime Infrastructure and port-level utilities described in this Part B, in accordance with the Design and Detailed Project Report (Rev. [•] dated [•]), applicable DPR standards, and any revisions to design and layout that the Authority may make during the planning or construction stage, consistent with the Authority's regulatory obligations as a Major Port under the Major Port Authorities Act, 2021 and other applicable laws.

All works described in this Part B shall be completed and handed over to the Concessionaire — in coordination with the Independent Engineer — prior to the Commercial Operations Date, unless otherwise specified or mutually agreed between the Parties. The Authority shall bear all costs associated with the works described in this Part B, save as provided in Section 2.1 of this Part B.

The Authority shall give the Concessionaire and the Independent Engineer not less than 30 (thirty) days' written notice of the intended date of handover of each element of the works described in this Part B, and shall hand over the same together with as-built drawings, test certificates and, in the case of dredging, certified survey data.

1. Maritime Infrastructure

1.1 Breakwater

- Design and construct the breakwater as per the revised drawings issued under Appendix 1, providing protection to the marina basin against wave action and storm surge, including all navigation lights, aids to navigation, and safety fencing; and
- design to appropriate return-period wave and storm-surge events in accordance with IS 4651 (all parts), the Shore Protection Manual (CERC), and applicable maritime standards, adopting a design return period of not less than 100 (one hundred) years and including an allowance for sea-level rise over the design life.

1.2 DELETED

1.3 RC Piled Service Platforms

- Design and construct six reinforced-concrete piled service platforms at strategic marina locations, designed to IS 9527 and applicable pile-foundation standards.

1.4 Approach Trestle

- Design and construct the approach trestle of approximately 150 linear metres (RC piled deck), capable of carrying pedestrian and emergency-vehicle loads, with non-slip surfacing, handrails, and drainage.

1.5 Floating Pontoon System and Gangways

- Design, procure, install and commission the complete floating pontoon and gangway system , including all pontoon walkways, fingers, gangways, integral bollards and fenders, anchor piling, mooring chains, and adjustable connections, providing approximately 424 berths.

1.6 Dredging

- Undertake dredging to the depth of (−) 4.50 m CD within the marina basin (Phase 1 area) to the required design depths, including disposal of all dredged material in compliance with the CRZ Notification, 2019 and all applicable environmental approvals, and provide certified as-dredged survey data to the Concessionaire prior to the COD; and
- The Authority shall, throughout the entire Concession Period, carry out periodic maintenance dredging of the P&V approach channel only to maintain the design depths established in the as-dredged dredging survey handed over to the Concessionaire prior to the COD. For the avoidance of doubt, maintenance dredging within the marina basin of the Marina Harbour shall remain the responsibility of the Concessionaire under Part A of this Appendix.

2. General

2.1 Any changes suggested by the Concessionaire during the execution of the works obligated under Authority's scope, which results in additional cost, such additional cost shall be borne by the Concessionaire. No such change shall be undertaken except with the prior written approval of the Authority, and the additional cost shall be certified by the Independent Engineer and paid by the Concessionaire to the Authority in advance of the change being implemented.

ANNEXURE TO APPENDIX 4

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

A. General

The Concessionaire shall execute the project by completing civil works as per the Scope of Work and provide appropriate equipment for performing its duties as per Project Facilities and Services and other support facilities for proper and efficient functioning.

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

The construction of civil works, facilities, erection & commissioning of lifting appliances, equipment and machinery and their layout shall ensure that during operations these facilities meet the required

provisions of the Dock Workers (Safety, Health and Welfare) Act, 1986 and the relevant Regulations 1990.

The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2015) and shall also obtain accreditation for operations at the Marina. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.

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

ORDER OF PRECEDENCE. Where any standard listed in this Annexure differs from an Indian Standard (IS/BIS) or a code, rule or regulation having the force of law in India that addresses the same subject matter, the Indian Standard or Applicable Law shall prevail. The Australian and Australian/New Zealand standards (AS and AS/NZS) listed below are included because they address marina-specific design matters for which no corresponding Indian Standard presently exists; they are adopted as contractual specifications only, and confer no statutory effect. Where an IS equivalent is notified during the Concession Period, that IS shall apply prospectively.

B. Civil Construction Work (Land Side and Marine Infrastructure side)

The civil construction work may comprise a variety of works such as dredging, reclamation, construction of breakwaters, berths, development of back-up area, approach roads, operational buildings/offices, maintenance workshop, drainage, water supply, environmental protection works and other amenities. The Concessionaire is required to undertake all tests required as per IS/ ISO/IEC standards to ensure that the construction work carried out by it meets not only the functional requirements of the project but also conforms to the required quality as per the standards.

1. Primary marina design references

Standard / Code	Title	Application
PIANC Report 149	Guidelines for Marina Design (RecCom WG 149, 2016/2017)	Principal international reference — layout, fairways, berthing, environmental and sustainability criteria for recreational craft harbours.
AS 3962:2020	Marina design	Governing marina-design standard, adopted contractually. Covers fixed berths, floating pontoons, single pontoons and floating wave attenuators for vessels up to 50 m; includes on-shore facilities.
PIANC WG 134	Design and operational guidance for small-craft marinas / design principles	Supplementary design guidance for small craft harbours.

Standard / Code	Title	Application
PIANC Report 50	Guidelines for berthing structures	Berth and mooring structure design principles.
PIANC WG 121	Harbour approach channels — design guidelines	Approach channel geometry, depth and manoeuvring (where applicable).
ICOMIA / TYHA guidance	Industry marina design & accreditation guidance	Optional benchmarking (berth standards, service provision, Gold Anchor). Mandatory to the extent required by Part A, Section 1.6.

2. Structural design actions & loads

Standard / Code	Title	Application
AS 4997:2005	Guidelines for the design of maritime structures	Key adopted structural standard for wharves, jetties, dolphins, piers and pontoon support piles — design actions, durability, vessel berthing/mooring forces.
AS 1170 series	Structural design actions — Part 0 general, Part 1 permanent/imposed, Part 2 wind, Part 4 earthquake	Combination of actions, dead/live, wind and seismic loads on structures and gangways. To be read with IS 875 (all parts) and IS 1893 (Part 1), which shall prevail for wind and seismic actions.
AS/NZS 1170.0	General principles	Limit-state design basis and load combinations.
ISO 21650:2007	Actions from waves and currents on coastal structures	International basis for wave, current and hydrodynamic loads on pontoons, piles and attenuators.
ISO 2394	General principles on reliability for structures	Reliability / limit-state framework underpinning design.
PIANC MarCom guidance	Vessel berthing energy & mooring loads	Berthing energy, fender selection and mooring line / cleat loads.

3. Floating pontoons, gangways & wave attenuators

Standard / Code	Title	Application
AS 3962:2020 (Sec.)	Floating pontoon systems, freeboard, stability, gangways	Pontoon freeboard, live load, point load, stability, gangway slope/access and pile-guide / mooring restraint design.
AS 4997:2005	Pile design for pontoon restraint	Guide piles, pile-to-pontoon connections and lateral load capacity.
EN 14504	Floating landing stages / pontoons	Useful international reference for pontoon load classes and stability (commonly cross-referenced).
ISO 21650	Wave / current actions on floating units	Mooring and motion loads on floating attenuators and pontoons in tidal/wave climate.
Manufacturer / accredited laboratory test data	Concrete & modular pontoon certification	Buoyancy, freeboard, load class and flotation material specs to AS 3962 requirements.

Tidal range note: For coastal/tidal sites, pile lengths, gangway lengths and freeboard must be designed for the full astronomical + storm-surge tidal range and for design wave conditions at the berth. For the Project Site, the design shall adopt the tidal levels and extreme water levels published by the Indian National Hydrographic Office for Mumbai, together with the storm-surge allowance established in the DPR.

4. Fixed piles, jetties & wharf structures

Standard / Code	Title	Application
AS 4997:2005	Design of maritime structures	Primary standard for fixed jetties, piers, wharves, fender and mooring structures.
AS 2159 / IS 2911	Piling — design and installation	Geotechnical and structural design of driven/bored marine piles.
AS 3600 / IS 456	Concrete structures	Reinforced/prestressed concrete decks, headstocks, piles (with marine durability/exposure classes).

Standard / Code	Title	Application
AS 4100 / AS/NZS 5100.6 / IS 800	Steel structures / bridge steel	Structural steel piles, framing and connections in marine exposure.
AS 1720 / AS 5604 / IS 883	Timber structures / timber durability	Timber decking, walers and piles — species, durability class and treatment.
AS 5100 series / IRC:6 and IRC:112	Bridge design	Often called up for heavily-loaded fixed access structures and vehicle-rated jetties.

5. Geotechnical, foundations & dredging

Standard / Code	Title	Application
AS 2159 / IS 2911	Piling — design and installation	Pile capacity, driveability, group effects and testing in marine soils.
AS 1726 / IS 1892 and IS 1893 (Part 1)	Geotechnical site investigations	Seabed investigation, sampling and classification.
PIANC / CIRIA dredging guidance	Dredging & sediment management	Capital and maintenance dredging methods, disposal and turbidity control.
CRZ Notification, 2019; Environment (Protection) Act, 1986; MoEFCC / MCZMA clearances	Dredging & reclamation approvals	Statutory environmental approval for dredging, spoil disposal and seabed disturbance, including disposal-site designation by the Authority.

6. Materials, durability & corrosion protection

Standard / Code	Title	Application
AS 4997 / AS 3600 / IS 456	Marine durability & exposure classification	Cover, concrete grade and design life for splash/tidal/submerged zones.
AS/NZS 2312	Guide to protection of structural steel against corrosion	Coating systems and durability for steel in marine/coastal exposure.
AS/NZS 4680 / IS 2629 and IS 4759	Hot-dip galvanizing of steel	Galvanized fasteners, brackets, gangways and frames.

Standard / Code	Title	Application
ISO 12944	Paints & varnishes — corrosion protection by protective paint systems	International coating selection by corrosivity category (C5-M / CX marine).
ISO 9223 / AS 4312	Atmospheric corrosivity classification	Establishing the corrosivity category of the coastal site.
AS/NZS 2832 / cathodic protection	Cathodic protection of metals	CP design for steel piles and submerged metalwork.
AS 1604 / AS 5604 / IS 401	Timber preservation & durability	Preservative treatment levels (e.g., H6 for marine in-water timber).

7. Electrical services

Standard / Code	Title	Application
AS/NZS 3004.1:2014 / IEC 60364-7-709	Electrical installations — Marinas and recreational boats: Part 1 Marinas	Primary standard for marina shore-power, distribution, RCDs, berth pedestals, bonding and isolation.
AS/NZS 3004.2:2014	Part 2 — Recreational boats installations	Onboard/boat-side electrical interface (vessel installations up to 50 m).
AS/NZS 3000 / IS 732	Wiring Rules	General low-voltage installation requirements (called up by AS/NZS 3004.1).
AS/NZS 3008 / IS 3961	Selection of cables	Cable sizing for runs along pontoons/piers and voltage drop.
AS/NZS 1768 / AS 1670 / IS/IEC 62305 and IS 2189	Lightning protection / detection & alarm	Lightning protection of exposed marina structures; fire detection where buildings present.
AS/NZS 60079 / IS/IEC 60079	Hazardous areas (fuelling)	Electrical equipment classification near fuel berths / refuelling facilities.
CEA Regulations, 2023	Measures relating to Safety and Electric Supply	Mandatory statutory regime for all electrical installations in India; prevails over the standards listed above.

8. Fire safety, fueling & marina services

Standard / Code	Title	Application
AS 3962:2020 (Sec.)	Fire safety, fire-fighting & services provisions	Hydrant/hose coverage, extinguishers, spacing and access for marina berths.
NFPA 303	Fire protection standard for marinas and boatyards	Widely referenced international benchmark for marina fire protection.
NFPA 307	Marine terminals, piers & wharves	Construction and fire protection of fixed marine structures.
AS 1940 / Petroleum Rules, 2002	Storage and handling of flammable & combustible liquids	Marina fuelling facilities, bunding and dispensing.
AS 2419 / AS 2441 / IS 13039 and IS 884	Fire hydrant installations / hose reels	Fire water supply and reticulation to pontoons and jetties.
AS 1428 series / Harmonised Guidelines and Standards for Universal Accessibility in India, 2021	Design for access and mobility	Accessible gangways, ramps, grades and amenities (compliance with the Rights of Persons with Disabilities Act, 2016).
AS 3962 / local sewage pump-out	Pump-out & waste reception	Black/grey water reception and environmental service provision.
NBC of India, 2016 (Part 4)	Fire and Life Safety	Mandatory statutory code for all buildings within the Project Site; prevails over the standards listed above.

9. Coastal, metocean & environmental

Standard / Code	Title	Application
ISO 21650	Actions from waves and currents	Design wave, current and water-level inputs for a tidal coastal site.
PIANC environmental guidance	Sustainable marina / water quality	Flushing, water quality, ecology and sustainability criteria.

Standard / Code	Title	Application
USACE CEM / CIRIA manuals	Wave climate, breakwaters, scour	Reference for wave transmission, attenuator performance and scour protection.
CRZ Notification, 2019; Environment (Protection) Act, 1986; Water (Prevention and Control of Pollution) Act, 1974; Wild Life (Protection) Act, 1972; Indian Ports Act / Major Port Authorities Act, 2021	Environmental approvals	Statutory marine ecology, mangrove, water-quality and coastal-process approvals, including MCZMA recommendation and MoEFCC / SEIAA clearance and compliance with the conditions of the Project EC and CRZ clearance.
AS 4997 (design life / serviceability)	Climate & sea-level allowance	Allowance for sea-level rise and storm surge over the design life.

10. Maintenance, inspection & operations

Beyond design and construction, the following govern the ongoing inspection, condition assessment and maintenance of the marina over its service life:

Standard / Code	Title	Application
AS 3962:2020	Maintenance & operational requirements	Operational provisions, signage, safety equipment and ongoing serviceability of berths and pontoons.
AS 4997:2005	Inspection & durability over design life	Basis for periodic structural inspection regimes and durability management of maritime structures.
AS/NZS 3004.1	Electrical periodic verification	Routine inspection and testing of marina electrical installations (RCDs, pedestals, bonding).
AS/NZS 3760	In-service safety inspection & testing of electrical equipment	Test-and-tag of pedestals, leads and portable equipment.
PIANC condition-assessment guidance	Asset / condition rating	Structured rating of pontoons, piles, gangways and hardware.

Standard / Code	Title	Application
AS 1851 / IS 2190	Routine service of fire protection systems & equipment	Servicing of hydrants, hose reels and extinguishers.
AS 2832 / CP monitoring	Cathodic protection monitoring	Periodic CP potential surveys and anode replacement.
Manufacturer O&M manuals	Pontoon, gangway & hardware servicing	Float, hinge, fastener, fender and mooring inspection intervals and replacement criteria.

Typical maintenance & inspection cycle

The following cycle is the minimum required of the Concessionaire under Part A, Sections 1.8 and 3, and shall be evidenced in the records made available to the Independent Engineer:

- Routine (monthly–quarterly): visual checks of pontoon freeboard/list, fasteners, fenders, cleats, gangway hinges, decking, and electrical pedestals (RCD test).
- Annual: detailed above-water structural and electrical inspection; fire equipment service (AS 1851); test-and-tag (AS/NZS 3760); tightening of bolted connections.
- Periodic (2–5 yearly): underwater / diver inspection of piles, anchors, chains and submerged steel; cathodic-protection potential survey; coating and corrosion assessment, any diving operation being subject to Part A, Section 1.16.19.
- Event-driven: post-storm / post-surge structural and mooring inspection after design-level metocean events.
- Long-term: durability / design-life review, dredging of berth pockets and maintenance dredging to design depth, and major component replacement (floats, gangways, piles) per condition rating.

Indian Standards for Foundation Work

IS 2911: Part 1: Sec 1: 1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 1 Driven cast in-situ concrete piles
IS 2911: Part 1: Sec 2: 1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 2 Bored cast in-situ piles
IS 2911: Part 1: Sec 3: 1979	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 3 Driven pre-cast concrete piles
IS 2911: Part 1: Sec 4: 1984	Code of practice for design and construction of pile foundations: Part 1 Concrete piles, Section 4 Bored pre-cast concrete piles
IS 2911: Part 4: 2013	Code of practice for design and construction of pile foundations: Part 4 Load test on piles

C. Safety Standards

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law and international conventions, as relevant and amended/updated from time to time including but not limited to those required under the following:

1. Dock Workers (Safety, Health and Welfare) Act, 1986 & Regulations framed thereunder of 1990.
2. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
3. The Petroleum Act, 1934 along with the Petroleum Rules, 2002.
4. OISD – Guidelines – 156 (Oil Industry Safety Directorate): Fire Protection Facilities for Port Oil Terminals.
5. The Explosives Act, 1884 along with the Explosive Substances Act, 1908 and the Explosives Rules, 2008.
6. Guidelines by Fire Advisor, CCE & DG FASLI, Government of India
7. National Fire Codes (National Fire Protection Association – USA)
8. Drill Manual for the Fire Services of India.
9. International Safety Guide for Oil Tankers & Terminals.
10. ISPS (International Ship & Port Facility Security) Code (2003 Edition), as amended
11. MARPOL 73/78, as given effect in India by the Merchant Shipping Act, 1958 and the rules made thereunder
12. International Maritime Dangerous Goods Code
13. The National Building Code of India, 2016.
14. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the rules made thereunder.
15. The Occupational Safety, Health and Working conditions Code, 2020, in respect of the Shipyard and Repair Yard and the Workshop.
16. Other applicable labour codes including Code on Wages, 2020, Code on Social Security, 2020 and Industrial Relations Code, 2020.

APPENDIX 5

PROJECT SCHEDULE

1. By Concessionaire

Milestone date	**Activity/level of completion of project**
12 months from Date of Award of Concession	20% of project works should have been completed
24 months from Date of Award of Concession	70% of project works should have been completed
36 months from Date of Award of Concession	100% of project works should have been completed

Note: The percentage of project works completed shall be determined by the Independent Engineer on the basis of the value of works completed as a proportion of the Total Project Cost set out in the Financial Package, in accordance with the construction programme submitted by the Concessionaire. The percentage of project work shall be determined basis the Mandatory Obligation facilities (other than the expansion under Article 7.1(a)(xviii)). The Concessionaire shall submit its detailed construction programme, identifying the Mandatory Obligation and Commercial Permitted Facility components separately, within 60 (sixty) days of the Date of Award of Concession.

2. By Authority

Completion of marina basin with 424 yacht capacity (berths) by January 2030.

APPENDIX 6

DESIGNS AND DRAWINGS

The Concessionaire will design the facilities and submit the construction drawings for the review of the Independent Engineer as per the Project requirements and the Scope of Work, as may be required. An indicative list of drawings to be prepared by the Concessionaire is given below:

(i) Layout plans of project facilities and services, with Mandatory and Non-Mandatory Facilities demarcated clearly
(ii) Layout plans and cross-sectional details of berthing structure and ancillary facilities
(iii) Typical details of slope protection works for dock basin and berths
(iv) Typical details of side protection wall for berths
(v) Drawings of drainage system within terminal area
(vi) Drawings of electrical system within terminal area
(vii) Drawings of water supply and firefighting arrangements and sprinkling system of dust suppression
(viii) Typical details of stack yards for storage purposes
(ix) Layout and cross-sectional detail of roads within the terminal
(x) General arrangement drawings and typical details for various handling equipment

Additional drawings typically required for approval

(xi) Overall master plan / general layout plan of the Project showing the Site boundary, phasing and setbacks
(xii) Topographic survey, bathymetric survey and contour plans
(xiii) Geotechnical investigation and soil/sub-soil profile drawings
(xiv) Foundation and pile layout drawings with reinforcement details
(xv) Buildings and ancillary structures (administrative block, control room, gatehouse, warehouses/sheds, workshops, security and weighbridge)
(xvi) Pavement design and details for yards, hardstanding and internal roads
(xvii) Grading, levelling and storm-water management / surface drainage plan
(xviii) Sewerage, sanitation and effluent treatment (STP/ETP) drawings
(xix) Water supply, plumbing and fire-fighting network (hydrants, pump house, storage tanks)
(xx) Electrical drawings – power supply, substation/transformer yard, HT/LT distribution, DG backup, cable routing and earthing
(xxi) Street lighting, high-mast and area lighting layout
(xxii) ICT, communication, CCTV/surveillance, access control and SCADA/terminal operating system layouts
(xxiii) Signage, road markings, traffic management and circulation plan (including parking)
(xxiv) Landscaping, green-belt and environmental mitigation drawings
(xxv) Utility corridors and cross-section drawings (combined services)
(xxvi) Fire safety, emergency evacuation and hazard zoning plans
(xxvii) As-built drawings (to be submitted on completion of construction)

APPENDIX TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. *Scope*

1.1.These Terms of Reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the Concession Agreement dated [●] (the "**Agreement**"), which has been entered into between Mumbai Port Authority (the "**Concessioning Authority**") and M/s. [●] (the "**Concessionaire**") for the Project 'Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode' at Mumbai Port, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. *Definitions and interpretation*

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement

2.2 References to Articles, Clauses and Appendix in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Appendix of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.3, 1.4 and 1.5 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. *Role and functions of the Independent Engineer*

3.1 The role and functions of the Independent Engineer shall include the following:

a. review of the Drawings and Documents as set forth in Paragraph 4;
b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
c. conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
d. review, inspection and monitoring of operation and maintenance as set forth in Paragraph 6;
e. review, inspection and monitoring of Concessionaire's obligations in Article 18.2 and as set forth in Paragraph 7;
f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
h. assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
i. Undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. *Development Period*

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-

technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Concessioning Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings in accordance with Appendix-6 and furnish its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Concessioning Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Concessioning Authority.

5. *Construction Period*

5.1 In respect of the Drawings, Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Concessioning Authority and the Concessionaire within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to specifications and standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice

for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Concessioning Authority in relation to structures, buildings and equipment (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Concessioning Authority forthwith, recommending whether or not such suspension may be revoked by the Concessioning Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Concessioning Authority and the Concessionaire of the same.

5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in this Appendix-7 and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 6.7 and this Appendix-7.

5.14 Upon reference from the Concessioning Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 6.8 and certify the reasonableness of such costs for payment by the Concessioning Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the maintenance manual.

6. *Operation Period*

6.1 In respect of the Drawings, Documents and Safety Standards received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

6.2 The Independent Engineer shall review the monthly report on number of Yacht handled, yacht berth days, utilities supplied, services provided, Tariff earned and collected in respect of Project Facilities and Services furnished by the Concessionaire and send its comments thereon to the Concessioning Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.3 The Independent Engineer shall inspect the Project, once every year, before the 20th (twentieth) day of any month, and make out an operation and maintenance inspection report setting forth an overview of the status, quality and safety of operation and maintenance including its conformity with the key performance indicators, maintenance requirements and Safety Standards. In a separate section of the operation and maintenance inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in operation and maintenance of the Project. The Independent Engineer shall send a copy of its operation and maintenance inspection report to the Concessioning Authority and the Concessionaire within 7 (seven) days of the inspection.

6.4 The Independent Engineer may inspect the Project more than once in a year, if any lapses, defects or deficiencies require such inspections.

6.5 The Independent Engineer shall in its operation and maintenance inspection report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the maintenance requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.6 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages, if any, payable by the Concessionaire to the Concessioning Authority for such delay.

7. *Termination*

7.1 At any time, not earlier than 90 (ninety) days prior to termination but not later than 15 (fifteen) days prior to such termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the requirements set forth in Article 18.2 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

8. *Determination of costs and time*

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. *Assistance in Dispute resolution*

9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. *Other duties and functions*

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. *Miscellaneous*

The Independent Engineer shall notify its programme of inspection to the Concessioning Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Concessioning Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Concessioning Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Concessioning Authority or such other person as the Concessioning Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Concessioning Authority.

11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Annexure

Tests

1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the project requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their contractors will be as per the relevant provisions of this agreement.

2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipment and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the best industrial practice shall be used for testing with the approval of the Independent Engineer.

3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.

4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipment and machinery.

5) The Independent Engineer at his discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipment and machinery and any other component to ascertain the soundness of the work.

6) Schedule of test.
   (i) The Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of the agreement
   (ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted

7) Tests:

(i) **Visual and physical test**: The Independent Engineer shall conduct a visual and physical check of the Port requirements to determine that all works and equipment forming part thereof conform to the provisions of the agreement.

(ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipment and machinery

(iii) **Structural test**: All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.

(iv) **Environmental Audit**: The Independent Engineer shall carry out a check to determine conformity of the project requirements with the environment requirement set forth in applicable laws and applicable permits.

(v) **Safety Review**: Safety Audit of the project requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the project requirements with the provisions of the agreement.

(vi) **The procedures for tests**: The procedures as stipulated in the relevant IS specifications shall be adhered and the equipment for testing shall be arranged through the Concessionaire.

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

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual will also cover the minimum maintenance requirement to adhere to the performance standards as per the provisions of this agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.

9) The test procedure shall be followed as per ASTM, BIS, IS.

10) Test shall also satisfy the appropriate Authority and Certification like

(i) Dock safety Directorate

(ii) Environmental Authority

(iii) Director of Explosives

(iv) Fire

(v) Ground Water Authority

(vi) Customs

APPENDIX 8

PERMITS AND CLEARANCES PROCURED BY THE CONCESSIONAIRE/ CONCESSIONING AUTHORITY

A. Applicable Permits to be obtained by Concessionaire during the Concession Period:

The Concessionaire is liable to obtain Applicable Permits as and when required before/ during the Concession Period. The following is list of Applicable Permits which are generally required.

1. Project-specific CRZ compliance and EC amendments/conditions compliance attributable to the Concessionaire's design
2. Consent to Establish and Consent to Operate from the State Pollution Control Board (Water Act, Air Act, Hazardous Waste Rules)
3. Building plan / construction permits and occupancy certificates from the local/ Special Planning Authority/structural design proof-checking and approval of marine structures, buildings and foundations
4. Approvals for berthing, mooring and aids to navigation from DG Shipping and Customs
5. Operational dredging/maintenance-dredging permits and disposal approvals
6. Fire NOC from the State Fire Services / Mumbai Port SPA
7. Electrical installation approval / Electrical Inspectorate (CEIG), DG sets, lifts and pressure-vessel approvals
8. PESO / Chief Controller of Explosives licences and petroleum storage licence for the fuel/bunkering station; LPG/diesel storage approvals
9. Port Facility Security Plan approval and ISPS Code compliance (and Customs/Immigration notification if a port of entry for international yachts)
10. FSSAI food licence, Excise/liquor licence and Tourism Department hotel classification for restaurants, yacht club and hotel components
11. Ground-water (CGWA) NOC, water-supply connection, STP/ETP consent and sewage disposal approvals
12. Telecom/WPC licensing for communication and surveillance equipment
13. Tree-felling/transplantation permission from the Forest Department
14. Labour and establishment registrations — Contract Labour licence, BOCW registration, Shops & Establishment, factory licence (if applicable), and GST/trade registrations
15. Advertisement/hoarding permits and event permits for the commercial and events components
16. All other Applicable Permits required under Applicable Laws for construction, operation and maintenance not expressly allocated to the Authority. The above list is not exhaustive and any other clearance required as per statutory requirement will be obtained by the concessionaire.

The Concessionaire will have to ascertain independently the required Applicable Permits and timeframe required for obtaining such Permits.

B. The following is list of Applicable Permits to be obtained by the Concessioning Authority:

Environment clearance and the CRZ clearance before commencement of project. (Already obtained)

APPENDIX 9A

PERFORMANCE GUARANTEE

(PROFORMA OF e- BANK GUARANTEE)[†]

THIS DEED OF GUARANTEE executed on this the [●] day of [●] at [●] by [●] (Name of the Bank) having its Head/Registered office at [●] hereinafter referred to as **"the Guarantor"** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favor of

Board of Mumbai Port Authority, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Port Bhavan, 3rd Floor, S.V.Marg, Fort, Mumbai 400001 (hereinafter referred to as **"the Board"** or **"the Concessioning Authority"**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

(a) The Board, vide its Request for Proposal dated [●] (**"Bidding Documents"**) invited interested parties to submit their bids for implementing project envisaging "Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode" for a period of 45 (forty-five) years by private sector participation (more particularly described in Appendix 1 and hereinafter referred to as **"the Project"**);

(b) After evaluation of the bids received, the Board accepted the bid of the consortium comprising of _____, _____ and _____ **("the Consortium")** *OR* the Board accepted the bid of _____ Ltd. ("**the Bidder**") and issued the Letter of Intent No _____ dated _____ **("LOI")** to the Consortium/Bidder requiring, inter alia, the execution of the Concession Agreement, **("the Concession Agreement")** the draft whereof was provided in the RFP;

(c) Pursuant to the LOI the Bidder/Consortium has promoted and incorporated a special purpose company [●] (**"the Concessionaire"**), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.

(d) In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable e-Bank Guarantee from a Scheduled Bank having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore) for a sum of Rs 46 crore (Rupees Forty Six Crore only) only as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

(e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge

[†]To be issued by a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore).

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s [●] ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.
3. The Guarantor shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs. 46 Crore (Rupees Forty Six Crore) only within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board's rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain in full force and effect for an initial period of 1 (one) year from the date hereof and shall be renewed in accordance with Article 4.1 of the Concession Agreement until the expiry of 6 (six) months from the COD unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate shall be limited to a sum of Rs.46 Crore (Rupees Forty Six Crore) only.
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.
8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
   (a) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;
   (b) shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;
   (c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
   (d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
   (e) shall not be affected by any failure, omission or delay on the Concessioning Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioning Authority in this Guarantee;
   (f) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defense for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.
10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under [●].
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Courts of Maharashtra for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defense, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

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

SIGNED AND DELIVERED by

[●] Bank by the hand of Shri [●] its [●] and authorized official.

APPENDIX 9B

PERFORMANCE GUARANTEE

(PROFORMA OF INSURANCE SURETY BOND)

THIS INSURANCE SURETY BOND executed on this the [●] day of [●] at [●] by [●] (Name of the Surety Insurer) having its Head/Registered office at [●] hereinafter referred to as "the Surety Insurer" which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favor of Board of Mumbai Port Authority, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at Mumbai Port Authority, Port Bhavan, 3rd Floor, S.V.Marg, Fort, Mumbai 400001 (hereinafter referred to as "the Board" or "the Concessioning Authority") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

a. The Board, vide its Request for Proposal dated [●] (**"Bidding Documents"**) invited interested parties to submit their bids for implementing project envisaging "Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode" for a period of 45 (forty-five) years by private sector participation (more particularly described in Appendix 1 and hereinafter referred to as **"the Project"**);

b. After evaluation of the bids received, the Board accepted the bid of the consortium comprising of _____, _____ and _____ **("the Consortium")** *OR* the Board accepted the bid of _____ Ltd. ("**the Bidder**") and issued the Letter of Intent No _____ dated _____ **("LOI")** to the Consortium/Bidder requiring, inter alia, the execution of the Concession Agreement, **("the Concession Agreement")** the draft whereof was provided in the RFP;

c. Pursuant to the LOI the Bidder/Consortium has promoted and incorporated a special purpose company [●] (**"the Concessionaire"**), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.

d. In terms of the LOI and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Surety Bond from an Insurance Company authorized by IRDAI for a sum of Rs.46.00Crore (Rupees Forty Six Crore) only as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Construction Phase,

e. At the request of the Concessionaire, and for valid consideration the Surety Insurer has agreed to provide Surety Bond, being these presents guaranteeing the due and punctual performance/ discharge by the Concessionaire of its obligations under the Concession Agreement during the Construction Phase.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

2. The Surety Insurer hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s [●] ("the Concessionaire") of all its obligations under the Concession Agreement during the Construction Phase.

3. The Surety Insurer shall, without demur or protest, pay to the Board sums not exceeding in aggregate Rs.46 Crore (Rupees Forty Six Crore) only within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Construction Phase. The Surety Insurer shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Surety Insurer's obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Surety Insurer by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Surety Insurer under this Agreement. The Concessioning Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Surety Insurer to pay the amount under the Surety Bond.

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

5. This Surety Bond shall be unconditional and irrevocable and shall remain in full force and effect for an initial period of 1 (one) year from the date hereof and shall be renewed in accordance with Article 4.1 of the Concession Agreement until the expiry of 6 (six) months from the COD unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Surety Insurer's liability in aggregate shall be limited to a sum of Rs.46 Crore (Rupees Forty Six Crore) only.

6. This Surety Bond shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Surety Insurer or any absorption, merger or amalgamation of the Concessionaire/the Surety Insurer with any other Person.

7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Surety Insurer hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Surety Insurer hereunder:

(a) shall not be affected by the existence of or release or variation of any other Surety Bond or security for any of the obligations of the Concessionaire under the Concession Agreement;

(b) shall not be affected by any failure by the Concessioning Authority to perform any of its obligations under the Agreement;

(c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Surety Insurer in respect hereof;

(d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;

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

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

9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, cross claims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defense for any reason whatsoever and the Surety Insurer, shall have no right to terminate this Surety Bond or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.

10. The Surety Insurer has power to issue this Surety Bond and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Surety Bond pursuant to the power granted under [●].

11. This Surety Bond shall be governed by and construed in accordance with the laws of India. The Surety Insurer hereby irrevocably submits to the exclusive jurisdiction of the Courts of Maharashtra for the purposes of any suit, action, or other proceeding arising out of this Surety Bond, or the subject matter hereof, brought by the Concessioning Authority or its successors or assigns. To the extent permitted by Applicable Law, the Surety Insurer or its successors or assigns hereby waive, and shall not assert, by way of motion, as defense, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

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

SIGNED AND DELIVERED by

[●] Bank by the hand of Shri [●] its [●] and authorized official.

APPENDIX 10

CERTIFICATES

COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project **"Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode"** through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article 6.7 and Appendix 7 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

SIGNED, SEALED AND DELIVERED For and on behalf of

the INDEPENDENT ENGINER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I, [[●] (Name of the Independent Engineer)], acting as Independent Engineer, under and in accordance with the Agreement dated [●], for the Project **"Development of World-class full service Viksit Bharat Mumbai Marina and Integrated Waterfront Assets at Mumbai Port on DBFOT (PPP) mode"** through [● (Name of Concessionaire)], hereby certify that the Tests specified in Article 6.7 and Appendix 7 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Concessioning Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND	SIGNED, SEALED AND DELIVERED
DELIVERED For and on behalf of	For and on behalf of INDEPENDENT
CONCESSIONAIRE by:	ENGINEER by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)

APPENDIX 11

PERSONNEL AND LABOUR REQUIREMENTS

DELETED.

APPENDIX 12

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

(Scale of Rates)

Scale of Rates as published by Mumbai Port Authority and notified from time to time to users. The same is available in Mumbai Port Authority's website (https://mumbaiport.gov.in/).

APPENDIX 13

MINIMUM GUARANTEED BERTH OCCUPANCY

1. Applicability: This Appendix sets out the Minimum Guaranteed Berth Occupancy ("MGBO") referred to in Article 7.1(a)(xix) of the Agreement.

2. Minimum Guaranteed Berth Occupancy: The MGBO applicable to each Operating Year shall be as under:

(a) Operating Years 1 to 3: NIL;

(b) Operating Years Block 1: 4 to 10: 50% (Fifty per cent);

(c) Operating Years Block 2 : 11 to 17: 70% (Seventy per cent);

(d) Operating Years Block 3 :18 to 24: 70% (Seventy per cent); and

(e) Operating Year Block 4: 25 to 31, Block 5: 32 to 42 70% (seventy per cent).

PLEASE NOTE: It is assumed that the Concessionaire starts operation from the 4th year of concession period with 42 years of operation. Any delay in concessionaire commencing the operation shall not guarantee them the full 42 years of operation and the concession period of 45 years shall prevail, unless any extension granted under the provisions of this Agreement.

3. Computation: Berth Occupancy for an Operating Year = (Berth Days Occupied ÷ Berth Days Available) × 100, where (a) "Berth Days Available" means the aggregate, for all berths commissioned and available for use during the Operating Year (including berths added under Article 7.1(a)(xviii) from the date of their commissioning), of the number of days in the Operating Year, excluding the days on which a berth was unavailable for any of the reasons set out in Article 7.1(a)(xix)(e); and (b) "Berth Days Occupied" means the aggregate number of days on which berths were occupied by vessels under annual, seasonal or transient berthing contracts, together with the berth-days deemed to be occupied under paragraph 4.

4. Monsoon Period: Having regard to the reduced movement of yachts during the south-west monsoon, for the period from 1st June to 30th September of each year, or such other fair-weather closure period as may be notified by the Authority (the "Monsoon Period"), (a) a berth let under an annual or seasonal berthing contract shall be deemed to be occupied for the Monsoon Period, whether the vessel remains afloat at the berth or is hauled out, dry-stacked or laid up within the Project; and (b) the days on which the Marina is closed to vessel movement by direction of the Deputy Conservator shall be excluded from the Berth Days Available.

5. Moving Block Periods: Compliance with the MGBO shall be assessed at the end of each Operating Year, commencing from the end of the 7th (seventh) Operating Year, for the Moving Block Period comprising that Operating Year and the 6 (six) immediately preceding Operating Years. The Concessionaire shall be treated as compliant for a Block Period if it has achieved the MGBO applicable to the relevant Operating Year in at least 5 (five) of the 7 (seven) Operating Years comprised in that Moving Block Period.

6. Consequences: Failure to achieve the MGBO in at least 5 (five) Operating Years in any Moving Block Period shall constitute a Concessionaire Event of Default under Article 7.1(a)(xix)(d).

7. Reporting and verification: The Concessionaire shall report the Berth Occupancy monthly under Article 8.1(d), and annually, certified by its Statutory Auditors, within 60 (sixty) days of the close of each Operating Year, supported by the berthing contracts, invoices and berth-management system records, which shall be subject to verification by the Independent Engineer and to Special Audit under Article 9.4.

APPENDIX 14

PERFORMANCE STANDARDS

1 Part A — Purpose, Scope and Definitions

1.1 A.1 Purpose

This Appendix sets out the minimum Performance Standards (the "Key Performance Indicators" or "KPIs") that the Concessionaire shall, at all times during the Operation Period, achieve and maintain in the development, management, operation and maintenance of the Viksit Bharat Mumbai Marina and the Project Facilities and Services.

1.2 A.2 Allocation of construction and O&M responsibility

Construction responsibility is split between the Parties; operation and maintenance responsibility for the whole facility rests with the Concessionaire for the entire Concession Period, as summarised below:

Responsibility	Concessioning Authority	Concessionaire
Construction	Marine-side development — breakwater / protection works, dredging and approach channel, fixed marine structures and aids to navigation. Floating pontoons, fingers, guide piling for 424 yachts	Land-side components — sailing school, yacht club, dry-stack, boat yard, events / exhibition areas, buildings, parking, landside utilities and services and other as per Appendix 4.
Operation & Maintenance (45 years)	**Not applicable**	The whole facility — both marine-side and land-side assets and services — throughout the 45-year Concession Period, including routine, periodic, major and lifecycle maintenance, and handback in the required condition.

Note on interface. The Concessionaire shall take over the Authority's marine-side works for O&M under a documented joint inspection / taking-over procedure that records the as-built condition and any snags. Thereafter the Concessionaire is responsible for maintaining those assets to the standards in this Appendix, without prejudice to the Authority's liability for latent defects in the original marine-side design and construction for the agreed defects-liability period.

Authority will hand over all as build designs and drawings of Marine side construction, for which Authority has liability to construct as per this Concession agreement, to the Concessionaire as part of the site handing over procedure.

1.3 A.3 Nomenclature and Change of Names

The names, titles and nomenclature assigned to the Marina, the Project Facilities and Services, and any component thereof under this Appendix or the Concession Agreement shall remain unchanged throughout the Concession Period. The Concessionaire shall not change, modify, substitute, rebrand or otherwise alter any such name or nomenclature, except with the prior approval of the Authority or in accordance with the directions issued by the Authority from time to time.

1.4 A.4 Definitions and interpretation

Capitalised terms used but not defined in this Appendix have the meanings given to them in the Concession Agreement. The following terms are used in this Appendix:

Term	Meaning
Critical KPI	A Service Level Requirement marked "Yes" in the "Critical" column of **Schedule I**, being a standard that bears directly on the safety of life, navigational safety, security or prevention of pollution / environmental harm. Failure of a Critical KPI attracts the higher consequences set out in Schedule III.
Good Industry Practice	The exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced international marina operator engaged in the operation and maintenance of a marina of a type, scale and complexity comparable to the Marina, in compliance with the Applicable Standards.
Applicable Standards	The codes, standards, accreditations and statutory requirements listed in Part B of this Appendix, as amended or replaced from time to time, together with any other standard expressly adopted in the Concession Agreement.
Measurement Period	Each calendar month during the Operation Period, unless a different period is specified for a particular KPI.
Operating Hours	The hours during which the Marina office, fuel berth and attended services are open, as declared by the Concessionaire; safety, security, berthing watch and emergency response services operate on a 24x7 basis throughout the year.
Availability	In respect of any equipment, system or facility, the proportion of the

Term	Meaning
	relevant period during which it is fully fit for its intended use, excluding pre-notified planned maintenance windows agreed with the Authority and periods of Force Majeure.
Lifecycle / Major Maintenance	Planned periodic renewal, refurbishment and replacement of assets and components over their service life (for example pontoon and finger replacement, re-piling, re-decking, re-dredging, travel-lift / forklift major overhaul, M&E plant replacement) necessary to keep the Whole Facility at the required standards throughout the 45-year term and to meet the handback condition.

2 Part B — Applicable Standards, Codes and Accreditations

The Marina shall be developed, operated and maintained so as to conform to Good Industry Practice and to the standards, codes and accreditations set out below. Where more than one standard addresses the same matter, the more stringent shall prevail; where any standard conflicts with Applicable Indian Law, Indian Law prevails, but the Concessionaire shall achieve the international standard to the extent permitted by law. The standards are grouped for convenience; all are part of the "Applicable Standards".

2.1 B.1 Marina accreditation and customer-service benchmarks

- **Global Gold Anchor Scheme (TYHA / MIA):** The internationally recognised marina accreditation scheme jointly administered by The Yacht Harbour Association (TYHA, UK) and the Marina Industries Association (MIA, Australia). Marinas are rated from 1 to 5 Gold Anchors, with a Platinum level above 5 Gold Anchors, assessed across six evaluation categories covering infrastructure, services, procedures and customer service, supported by an independent site assessment, a berth-holder questionnaire and "mystery shopper" checks. Target accreditation for the Marina: a minimum of 4 Gold Anchors to be achieved within 24 (twenty four) months of the Commercial Operations Date and thereafter maintained throughout the Operation Period, and aspire of achieve 5 Gold Anchors with Platinum during the Operation Period, **.**
- **ICOMIA Clean Marina accreditation.** Environmental accreditation administered through the International Council of Marine Industry Associations / MIA, recognising marinas that meet defined environmental management criteria. To be obtained and maintained as a continuing obligation.

2.2 B.2 Design and operational guidelines

- **PIANC Report No. 149 (2016) – Guidelines for Marina Design** (Parts 1–4), and PIANC Report No. 134 (2013) – Design and Operational Guidelines for Superyacht Facilities, issued by the World Association for Waterborne Transport Infrastructure (PIANC), together with PIANC's 2023 guidance on sustainable recreational navigation infrastructure.
- **TYHA Code of Practice** for the Design, Construction and Operation of Coastal and Inland Marinas and Yacht Harbours.
- **AS 3962 (Standards Australia) – Guidelines for Design of Marinas**, for berth, fairway and pontoon geometry and loadings.
- **ASCE Manual of Practice No. 50 – Planning and Design Guidelines for Small Craft Harbors** (American Society of Civil Engineers).
- **IALA Recommendations** for marine aids to navigation, buoyage, marking and lighting of the approach channel, fairways and berths.

2.3 B.3 Fire safety, electrical safety and life safety

- **NFPA 303 – Fire Protection Standard for Marinas and Boatyards**, **NFPA 307 OR Higher** – Standard for the Construction and Fire Protection of Marine Terminals, Piers and Wharves (National Fire Protection Association), for fire-fighting provision, fuel handling and electrical hazard control on piers and pontoons.
- **IEC 60364-7-709 – Low-voltage electrical installations OR Higher – Requirements for special installations or locations: Marinas and similar locations**, including individual residual-current (RCD/RCBO) protection of shore-power outlets, read with the Indian Electricity Rules / CEA (Measures relating to Safety and Electric Supply) Regulations and the relevant IS / BS 7671 provisions.
- **PESO (Petroleum and Explosives Safety Organisation) OR Higher** licensing and standards for the fuel berth and any fuel storage / dispensing installation.

2.4 B.4 Environmental, pollution-prevention and security standards

- **MARPOL 73/78 OR Higher** (oil, sewage and garbage) principles for the provision of reception facilities and for waste, bilge, oily-water and sewage handling.
- **ISPS Code** (International Ship and Port Facility Security Code under SOLAS) **OR Higher**, to the extent the Marina or any part of it is a regulated facility, and otherwise as a security benchmark for access control and surveillance.
- **Management-system certifications:** ISO 9001 (Quality), ISO 14001 (Environmental Management), ISO 45001 (Occupational Health & Safety) OR Higher and, where information systems handle user / payment / personal data, ISO/IEC 27001 (Information Security) OR Higher and applicable Data Protection and Data Security requirements, including DPDS. The Concessionaire shall obtain and maintain at least ISO 9001, ISO 14001 and ISO 45001 OR Higher certification for the Marina operation within 24 (twenty four) months of the Commercial Operations Date and, where applicable, ISO/IEC 27001 OR Higher certification and DPDS compliance within 24 (twenty four) months of the Commercial Operations Date.B.5 Sailing-school, training and on-water activity standards
- **RYA Recognised Training Centre (Royal Yachting Association).** The internationally recognised benchmark for sail and powerboat training. The Sailing School shall be operated as, and maintain recognition as, an RYA Recognised Training Centre (subject to annual RYA inspection of craft, equipment, instructor qualifications, systems and safety), or to an equivalent international standard (e.g. ASA or IYT Worldwide), delivering recognised certification (RYA Competent Crew, Day Skipper, Coastal Skipper / Yachtmaster, dinghy and powerboat schemes).
- **World Sailing and Yachting Association of India (YAI).** On-water training, racing and regatta activity shall comply with the World Sailing rules or higher/equivalent standards and the requirements of the Yachting Association of India (YAI), the national authority affiliated to World Sailing, including affiliation / recognition of the school and club where applicable, or such higher

standards as may be prescribed by YAI, World Sailing or any applicable authority from time to time.

- **Safety-craft and supervision ratios.** Trained-instructor-to-student and safety-boat-to-fleet ratios, qualified safety-boat cover, and on-water supervision shall at all times meet or exceed RYA / World Sailing requirements OR Higher; all participants briefed and equipped with serviceable personal flotation devices.

2.5 B.6 Dry-stack, boat-yard and craft-handling standards

- **Lifting and handling equipment.** Marine travel-lifts, boat hoists, forklifts / stackers and slipway equipment shall be operated, inspected, load-tested and maintained in accordance with the manufacturer's (OEM) instructions, rated safe working loads, and the applicable lifting-equipment safety regime (thorough examination of lifting equipment, and the relevant IS / international lifting standards), by trained and certified operators.
- **Racking and structures.** Dry-stack racking shall be designed, certified and periodically inspected to the relevant structural and OEM standards, with rated capacities clearly marked and not exceeded.
- **Boat-yard good practice.** Haul-out, hardstanding, refit, paint / antifouling and wash-down operations shall follow ICOMIA Clean Marina / Clean Boatyard practice OR Higher, ABYC technical standards OR Higher for work on craft, and the applicable environmental controls for run-off, hazardous materials and waste.

2.6 B.7 Additional safety protocols

- **Women's Safety and Security Standards**: The Concessionaire shall establish and maintain a comprehensive policy to prevent and address gender-based violence, harassment, and sexual assault in strict accordance with **ILO Convention 190 (C190)** and the relevant safety provisions of the **Maritime Labour Convention (MLC)**. Furthermore, operational infrastructure and policing within the Marina premises must comply with national guidelines from the **Ministry of Home Affairs (Women Safety Division)** and the **POSH Act, 2013**, ensuring adequate surveillance, lighting, and rapid-response safety mechanisms.
- **Narcotics Control and Prevention Standards**: The Concessionaire shall enforce a zero-tolerance policy regarding the possession, trafficking, or consumption of illicit substances within the facility. Security protocols, vessel checks, and perimeter surveillance must align with the **UNODC/WHO International Standards on Drug Use Prevention** and the anti-smuggling guidelines of the **ISPS Code**. The Concessionaire shall maintain strict compliance with the **Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985** and coordinate directly with local maritime and law enforcement authorities.

2.7 B.8 Indian statutory and regulatory framework

Compliance with all Applicable Laws, as amended and updated from time to time, Applicable Permits and the conditions of all clearances, including without limitation:

- Maharashtra Maritime Board (MMB) regulations, for yacht registering and other relevant regulagions.
- The Indian Ports Act, 2025 and, to the extent applicable to the host port, the Major Port Authorities Act, 2021, together with the regulations of the relevant port authority.
- The Merchant Shipping Act, 2025 and Directorate General of Maritime Administration rules and notifications relevant to small craft, safety equipment and pollution prevention.
- The Coastal Regulation Zone (CRZ) Notification, 2019 and the approved Coastal Zone Management Plan, and the Environment (Protection) Act, 1986 and rules made thereunder, including the conditions of the environmental clearance for the Project.
- The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, and the consents and authorisations of the Maharashtra Pollution Control Board (including hazardous-waste authorisation).
- The National Building Code of India, 2016, the relevant Bureau of Indian Standards (IS) codes, and the local fire-services / building regulations of the Municipal Corporation of Greater Mumbai.
- Guidelines and policy of the Ministry of Ports, Shipping and Waterways (including the Sagarmala programme) and any national marina / cruise-tourism guidelines applicable from time to time.
- The Customs Act, 1962, and rules, notifications, and procedures prescribed thereunder by the Central Board of Indirect Taxes and Customs (CBIC) for vessel entry, clearing, and baggage checks.
- The Passport (Entry into India) Act, 1920, and the Bureau of Immigration (Ministry of Home Affairs) regulations governing international crew/passenger visas, immigration clearance, and landing permits.
- The Indian Port Health Regulations and requirements of the Port Health Organisation (PHO) under the Ministry of Health and Family Welfare for maritime health clearance and quarantine protocols.
- GRIHA (Green Rating for Integrated Habitat Assessment) / IGBC (Indian Green Building Council) guidelines, ensuring all landside commercial and hospitality structures maintain a minimum [4-Star / Gold] green building rating.
- National Disaster Management Authority (NDMA) Act, 2005, NDMA guidelines, local coastal police safety protocols, and the prevailing maritime search and rescue (SAR) frameworks applicable to recreational watercraft.

3 Part C — Performance Standards

3.1 C.1 Operation & Maintenance Requirements

- The Concessionaire shall, at all times, operate and maintain the whole facility all marine-side and land-side assets and services across the Marina, Sailing School, Yacht Club, dry-stack, boat yard, events / exhibition areas and common infrastructure, irrespective of which Party constructed them — in accordance with the Concession Agreement, Applicable Laws, Applicable Permits, the Applicable Standards and Good Industry Practice, and shall at all times during the Operation Period conform to the Operation & Maintenance Requirements and the Service Level Requirements set out in this Appendix.
- The Concessionaire shall repair or rectify any defect or deficiency within the time stipulated for the relevant KPI in Schedule I or, where no time is stipulated, within a reasonable time in accordance with Good Industry Practice or as notified by the Authority / Independent Engineer. Any failure in this behalf shall constitute a breach of the Concession Agreement and shall attract the consequences set out in Schedule III.
- Where the Concessionaire fails to comply within the stipulated or reasonable time, it shall record the reasons in its monthly Compliance Report. If the nature and extent of a defect or deficiency justifies more time for its repair or rectification than the time specified, the Concessionaire shall be entitled to additional reasonable time on a case-to-case basis as determined by the Independent Engineer / Authority. Any failure to repair or rectify any such defect or deficiency beyond 3 (three) written notices shall constitute a breach of the Concession Agreement, and the Concessionaire shall be liable to pay liquidated damages in accordance with the Article 7.3 of this Concession Agreement.
- The Concessionaire shall at all times maintain an adequate inventory of spares, consumables, safety and pollution-control equipment to meet the Operation & Maintenance Requirements and to respond to foreseeable emergencies.

3.2 C.2 Extension of time limit

Notwithstanding anything to the contrary in this Appendix, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer / Authority and conveyed to the Concessionaire with reasons.

3.3 C.3 Emergency repairs and restoration

Notwithstanding anything to the contrary in this Appendix, if any defect, deficiency, deterioration, grounding, sinking, fire, escape of fuel or oil, or failure of a mooring, pontoon, gangway or aid to navigation poses a hazard to safety, to navigation, to the environment or a risk of damage to property, the Concessionaire shall promptly, and in any event within the response time stipulated for the relevant Critical KPI, take all reasonable measures to eliminate or minimise such danger, and shall notify the Authority forthwith.

3.4 C.4 Inspection by the Concessionaire

The Concessionaire shall, through its harbour master / marina engineer, undertake periodic (at least weekly) inspection of the Marina — including pontoons, fingers, gangways, mooring and anchoring systems, fenders, ladders, life-saving and fire-fighting appliances, electrical pedestals and aids to navigation — and a periodic (at least monthly) hydrographic check of declared depths in berths, fairways and the approach channel, and shall maintain records thereof in registers. Such records shall be kept in safe custody and be open to inspection by the Independent Engineer / Authority at any time during Operating Hours.

3.5 C.5 Divestment requirements

All defects and deficiencies specified in this Appendix shall be repaired and rectified by the Concessionaire so that the Marina and the Project Facilities and Services conform to the Operation & Maintenance Requirements and the declared service standards on the Transfer Date, as verified by the condition survey under the Concession Agreement.

3.6 C.6 Safety requirements

3.6.1 *C.6.1 Guiding principles*

- The Safety Requirements aim at the reduction of injuries, loss of life and damage to property and the environment arising from accidents on or about the Marina, irrespective of the person(s) at faultThey apply to all phases of development, management, operation and maintenance, with emphasis on the identification of hazards, assessment of risk, and implementation of remedial measures, including safe vessel movement, berthing and mooring, fuel handling, fire safety, electrical safety, man-overboard and rescue response, diving / in-water works, and emergency response, having particular regard to NFPA 303, IEC 60364-7-709 and the other Applicable Standards, as amended, updated or replaced from time to time.

3.6.2 *C.6.2 Obligations of the Concessionaire*

The Concessionaire shall abide by:

(a) Applicable Laws and Applicable Permits;

(b) the provisions of the Concession Agreement;

(c) the relevant standards / guidelines in the Applicable Standards and nationally accepted codes; and

(d) Good Industry Practice.

3.6.3 *C.6.3 Safety measures during the Operation Period*

- The Concessionaire shall develop, implement and administer a documented Marina Safety Management Plan covering the Marina, its Project Facilities and Services, staff, berth-holders, crew, visitors and other persons, including the correction of safety violations and deficiencies, and shall conduct emergency drills (fire, oil-spill, man-overboard, evacuation and severe-weather / cyclone) at the minimum frequencies set out in Schedule I. Concessionaire shall submit such Marina Safety Management Plan to Authority before the start of Commercial Operations of the Project.

- The Concessionaire shall keep a copy of every First Information Report (FIR) recorded by the Police in respect of any accident occurring on or about the Marina, shall additionally collect data on all accidents not recorded by the Police, and shall summarise and submit such information to the Authority at the conclusion of every quarter.
- The Concessionaire shall submit to the Authority, before the 31st (thirty-first) May of each year, an annual safety report containing a detailed listing and analysis of all accidents and significant near-misses of the preceding Accounting Year and the measures taken to avert or minimise such accidents in future.

3.6.4 *C.6.4 Costs and expenses*

All costs and expenses incurred in connection with the Safety Requirements set out herein shall be borne by the Concessionaire.

3.7 C.7 Environmental requirements

- The Concessionaire shall develop, implement and maintain an Environmental Management Plan consistent with **ISO 14001 or higher/equivalent standards**, the conditions of the environmental clearance and CRZ approval, MARPOL principles and the criteria of the **ICOMIA Clean Marina and Blue Flag schemes or higher/equivalent standards**, covering waste segregation and disposal, including hazardous and oily waste, sewage and bilge reception, fuel and oil-spill prevention and response, water-quality monitoring of the basin, control of antifouling and boatyard run-off, noise and emissions, and protection of marine ecology. The Concessionaire shall maintain oil-spill containment and clean-up equipment commensurate with the Marina's fuel throughput and shall be able to deploy first-response containment within the time stipulated for the relevant Critical KPI.
- The Concessionaire shall monitor and report basin water quality at the frequency and against the parameters agreed with the Maharashtra Pollution Control Board and the Authority.

3.8 C.8 Berth-holder / user feedback survey

- The Concessionaire shall develop and conduct a berth-holder / user feedback survey every quarter (aligned with the Gold Anchor berth-holder questionnaire), and shall ensure that the Marina achieves user satisfaction of at least 90% (ninety percent) in such survey and maintains the same throughout the Operation Period.
- The Concessionaire shall, within 21 (twenty-one) days of the end of each quarter, provide the Authority a written report on the results of the survey, together with its analysis and the action (if any) it proposes for improvement in user satisfaction.
- The nature and content of the survey shall be determined mutually by the Concessionaire and the Independent Engineer and approved by the Authority, so as to be objective and representative of a cross-section of users (hotel, retail annual, seasonal and visiting craft).
- If the survey reveals that more than 15% (fifteen percent) of users surveyed are not satisfied and rank the services as poor, the Authority may, by notice, require the Concessionaire to submit a detailed compliance / improvement report; if the Authority finds such compliance unsatisfactory, the same shall be treated as non-performance of the Concessionaire's obligations and shall attract

liquidated damages in accordance with Schedule III and the relevant clause of the Concession Agreement.

3.9 C.9 Service Level Requirements

The Concessionaire shall at all times ensure that it achieves the Service Level Requirements set out in Schedule I (Objective Service Level Requirements / KPIs) and Schedule II (Subjective Service-Quality Requirements) of this Appendix. The consequences of failure to achieve them are set out in Schedule III.

3.10 C.10 Whole-facility maintenance, lifecycle and handback (45-year term)

- The Concessionaire shall prepare, maintain and implement an Asset Management Plan and a Lifecycle / Major-Maintenance Plan covering all marine-side and land-side assets for the full 45-year Concession Period, scheduling routine, periodic, major and lifecycle maintenance (including pontoon / finger replacement, re-piling and re-decking, periodic re-dredging to declared depths, overhaul / replacement of the travel-lift, forklift / stacker and slipway equipment, and renewal of M&E plant), and shall maintain an asset register and condition records open to inspection by the Authority / Independent Engineer.
- The Concessionaire shall maintain the marine-side assets constructed by the Authority to the same standards as the land-side assets it constructs, from the date of taking over under the joint inspection / taking-over procedure (Paragraph A.3). The Authority's liability for latent defects in the original marine-side design and construction during the agreed defects-liability period is without prejudice to the Concessionaire's ongoing O&M obligation.

4 Schedule I — Objective Service Level Requirements (KPIs)

The Concessionaire shall at all times ensure that the services provided across the whole Viksit Bharat Mumbai Marina complex - the marina, the Sailing School, the Yacht Club, the dry-stack, the boat yard, the events / exhibition areas and the common infrastructure — conform to the Key Performance Indicators ("Service Level Requirements") specified in this Schedule I. The "Critical" column identifies KPIs bearing on safety of life, navigational safety, security or pollution prevention; failure of a Critical KPI attracts the higher consequences set out in Schedule III. Time limits, percentages and frequencies marked [●] are to be finalised against the Marina's declared design parameters.

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
A. Marine and Berthing Operations			
Online-only berth booking & allocation	Confirmation of advance / annual berth bookings	100% of advance berth applications confirmed or declined within 1 (one) working day	**Yes**
	Allocation of visitor / transient berth on arrival	95% of pre-notified visiting craft allocated a berth within 15 minutes of arrival at the waiting	**No**
VHF radio watch	Continuous listening watch and response	VHF Ch [16/09/M1] monitored 24x7; 95% of calls answered within 2 minutes	**Yes**
Berthing / mooring assistance	Dockmaster / berthing crew attendance	95% of pre-notified arrivals and departures attended by berthing crew within 10 minutes	**No**
Aids to navigation	Availability of lit aids, channel marks and berth lighting	99% availability; any defective navigation light or mark made good (or temporary mark deployed) within 24 hours	**Yes**
Basin depth	Maintenance of declared dredged depth	Declared depths in turning basin within breakwater area and berths maintained to within [●] m of Chart Datum; soundings monthly; siltation survey quarterly; remedial dredging on exceedance	**Yes**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Fairways & manoeuvring areas	Kept clear of obstructions and derelict / abandoned craft	100% — obstructions or sunken / derelict craft marked immediately and removed within 90 days	**Yes**
Mooring & berthing systems	Integrity of cleats, rings, fingers, fenders and ground tackle	Weekly inspection: defects affecting safety rectified within 7 days	**Yes**
Fuel berth	Availability of fuelling service	98% availability during Operating Hours; fuel quality and PESO compliance maintained at all times	**No**
Sewage / bilge pump-out	Availability of black-water, grey-water and bilge reception	98% availability; maximum wait for pump-out service 30 minutes during Operating Hours	**Yes**
Haul-out (travel-lift / hoist / slipway)	Lift / launch turnaround for full-service yard	95% of booked haul-out / launch operations completed within the booked slot; booking offered within 48 hours	**No**
B. Technical Services, Utilities and Infrastructure Availability			
Shore power	Availability and electrical safety of shore-power pedestals	99% availability per berth; every outlet individually RCD/RCBO-protected per IEC 60364-7-709; safety fault isolated immediately and repaired within 24 hours	**Yes**
Potable water	Availability of potable water at berths	99% availability; leaks / failures rectified within 24 hours	**No**
Pontoons, fingers & gangways	Structural integrity and safe access	Weekly inspection; any condition affecting safe access made safe immediately and repaired to Good Industry Practice	**Yes**
Marina lighting	Berth, pontoon and	98% availability; failed lighting affecting safe movement restored	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
	walkway lighting	within [12] hours	
Security — access control & CCTV	Availability of gates, access control and surveillance (International Ship and Port Facility Security Code -aligned)	98% availability; CCTV recording retained for [●] days; access-control failure attended within [2] hours	**Yes**
Wi-Fi / telecommunications	Availability of berth-holder connectivity	95% availability	**No**
Lifts / travelators (buildings)	Availability of vertical transport in marina buildings	98% availability	**No**
C. Safety and Emergency Response (NFPA 303, ISPS, MS Act)			
Emergency response	Time to first responder on scene (fire, man-overboard, sinking, medical)	100% trained first responder on scene within 15 minutes, 24x7, with rescue craft / equipment	**Yes**
Fire-fighting systems	Availability and servicing of extinguishers, hydrants, hose reels, fire pumps and alarms per NFPA 303	100% in-date and serviceable; monthly inspection; any defect made good within [24] hours	**Yes**
Life-saving appliances	Lifebuoys, throw-lines, ladders and grab-rails at prescribed intervals	100% present and serviceable at all times along pontoons and walkways	**Yes**
First aid & AED	Availability of first-aid and defibrillator provision	100% available and in-date during Operating Hours; trained first-aiders on each shift	**Yes**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Emergency drills	Frequency of fire, oil-spill, man-overboard, evacuation and cyclone drills	At least quarterly for each scenario; records maintained	**Yes**
Incident reporting	Reporting of reportable incidents / accidents to the Authority	100% of reportable incidents notified within 24 hours; full report within 7 days	**Yes**
D. Environmental Management (Blue Flag, ICOMIA Clean Marina, MARPOL, CRZ)			
Oil / fuel spill response	Time to deploy first-response containment	100% — containment boom / spill kit deployed within [15] minutes of detection; spill kits stocked at all times	**Yes**
Waste collection & segregation	Routine collection of general, recyclable and hazardous / oily waste	Daily collection; bins not overflowing; 95% of inspections rated satisfactory	**Yes**
Reception facilities	Operation of sewage, bilge, oily-water and garbage reception (MARPOL)	98% operational availability	**Yes**
Basin water quality	Monitoring against agreed parameters	Sampling at agreed frequency; results within consented parameters; exceedance reported and remediated	**Yes**
Regulatory compliance	Compliance with CRZ, environmental clearance and MPCB consent conditions	100% — zero non-compliances; any notice responded to within stipulated time	**Yes**
E. Customer Service and Administration (Gold Anchor)			
Reception / harbour office	Staffed and accessible during declared hours	100% staffed during Operating Hours; out-of-hours contact available 24x7	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Complaint handling	Acknowledgement and resolution of complaints	100% acknowledged within 1 working day; 90% resolved or substantively responded to within 2 working days; Complaint Register maintained	**No**
Telephone response	Answering of telephone enquiries	90% of calls answered within 60 seconds	**No**
Billing & accounts	Accuracy and timeliness of invoices	99% of invoices issued accurately; billing disputes acknowledged within [2] working days	**No**
User satisfaction	Quarterly berth-holder / user satisfaction survey	Overall satisfaction ≥ 90%; not more than 30% rating any service "poor" (see C.8)	**No**
Information & signage	Availability of way-finding, tariff, safety and environmental information	98% availability; information current and bilingual where required	**No**
F. Cleanliness and Amenities			
Pontoons & common areas	Cleanliness of pontoons, walkways and common areas	Achieve a satisfactory rating for 95% of all inspections	**No**
Ablutions / showers / laundry	Cleaning and servicing to schedule	Cleaned to the published schedule; 95% of inspections satisfactory; consumables replenished	**No**
Accessibility	Facilities for persons with disability / reduced mobility	100% of accessible facilities (access, washrooms, berth assistance) available within 5 minutes when required	**No**
G. Landside and Access			

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Car parking	Availability of parking bays	99% availability for berth-holders and visitors	**No**
Access road / frontage	Travel time on internal access road	95% of vehicles to clear the internal access road within [●] minutes	**No**
Chandlery / provisioning / services	Availability of full-service amenities	Chandlery, technical services, brokerage and F&B available during declared hours [98%]	**No**
H. Dry-Stack / Yacht Stack Parking (200 craft)			
Launch on request	Time to launch a stacked craft against booked / requested slot	95% of pre-booked launches completed within [30] minutes of the requested slot; same-day requests honoured subject to fair-use rules	**No**
Retrieval & re-stack	Time to haul out and return a craft to its rack	95% of retrievals completed within [45] minutes of return to the handling berth	**No**
Handling equipment	Availability of marine travel-lift / forklift / stacker	98% availability during Operating Hours; OEM-certified operators; equipment within thorough-examination / load-test validity at all times	**Yes**
Racking structure	Structural integrity and rated capacity of racking	Periodic structural inspection; rated capacities marked and not exceeded; any defect affecting safety made safe immediately	**Yes**
Booking / scheduling system	Availability of the dry-stack booking system	98% availability	**No**
I. Boat Yard (≈ 2 hectares)			
Haul-out / launch	Turnaround for booked haul-out / launch	Booking offered within 48 hours; 95% of operations completed within	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
		the booked slot by certified operators **Specifications:** Use of certified hydraulic trailers, travel lifts, or cranes; operators certified by recognized maritime institutes., IMU/NIPM OR Higher; compliance with Good Industry Practice for vessel movement. **Certifications:** ISO 9001 (Quality Management); operator certification; machinery safety standards (e.g., ISO 13849) OR Higher.	
Hardstanding	Availability of hardstanding / storage	99% availability against allocation; craft chocked / cradled to Good Industry Practice **Specifications:** Hardstanding surfaces constructed for marine loads and drainage; chocking/cradling as per ABYC/ICOMIA guidelines OR Higher **Certifications:** ISO 9001 (Quality Management); ABYC compliance; ICOMIA standards for marina operations OR Higher.	**No**
Workshop / refit services	Availability of repair, refit and technical services	Available during declared hours [98%]; works to ABYC technical standards **Specifications:** Fully equipped workshops for marine repair; repair and refit works to ABYC standards OR Higher. **Certifications:** ISO 9001 (Quality Management); ISO 45001 (Occupational Health & Safety); ABYC-certified technical staff or	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
		equivalent (e.g., IMI/City & Guilds) OR Higher.	
Wash-down & antifouling controls	Containment and treatment of yard run-off	100% — wash-down / antifouling run-off contained and treated; zero uncontrolled discharge **Specifications:** Dedicated wash-down bays with run-off containment and treatment (oil-water separators, filtration); no uncontrolled discharge. **Certifications:** ISO 14001 (Environmental Management); MPCB authorization for effluent treatment; ICOMIA Clean Marina or Blue Flag certification OR Higher.	**Yes**
Hazardous materials & waste	Handling, storage and disposal of paints, solvents and oily waste	100% compliance with MPCB hazardous-waste authorisation; no uncontrolled storage or disposal **Specifications:** Secure, bunded storage for hazardous materials; compliant disposal as per MPCB authorization; regular audits and record-keeping. **Certifications:** ISO 14001 (Environmental Management); MPCB hazardous waste authorization OR Higher; staff trained in hazardous waste handling.	**Yes**
J. Sailing School			
Training-centre accreditation	Maintenance of RYA(Royal Yachting Centre)Recognised Training Centre (or equivalent) status	100% — recognition maintained; annual inspection passed; recognised certification delivered	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Instructors & supervision ratios	Qualified instructors and instructor:student / safety-boat ratios	100% of instruction by appropriately qualified instructors; ratios meet or exceed RYA / World Sailing requirements at all times	**Yes**
Safety-boat cover	On-water rescue / safety-boat cover during activity	100% — qualified safety-boat cover present for all on-water training and activity	**Yes**
Training craft & PFDs	Serviceability of training craft and personal flotation devices	100% of craft and PFDs serviceable and within inspection validity; defective items withdrawn immediately	**Yes**
Course delivery	Adherence to published course schedule	95% of scheduled sessions delivered (weather / safety stand-downs excepted)	**No**
Safety record	On-water training incidents	Zero serious safety incidents; 100% of incidents / near-misses recorded and reported	**Yes**
Equality/Equity in Admissions	Fair and equitable access to training for all applicants, regardless of gender, background, or ability	100% — admissions policy ensures equal opportunity and non-discrimination; outreach and support for underrepresented groups.	**Yes**
K. Yacht Club and Member Services			
Clubhouse availability	Availability of clubhouse and member facilities	98% availability during declared hours	**No**
Food & beverage hygiene	F&B service quality and food safety	FSSAI-compliant; 95% of hygiene / quality inspections satisfactory	**No**
Member / visitor services	Response to member and visitor requests and	95% of requests responded to within [1] working day	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
	bookings		
Club cleanliness	Cleanliness of clubhouse and changing / locker facilities	95% of inspections satisfactory; consumables replenished	**No**
Equity and Equality in Access	Fair and equitable access to club membership, facilities, and services	100% — admissions and access policy ensures equal opportunity and non-discrimination for all, regardless of gender, background, or ability.	**Yes**
L. Events and Exhibition Areas			
Area availability	Availability of events / exhibition areas for confirmed bookings	100% of confirmed event bookings honoured	**No**
Setup & teardown	Adherence to setup / teardown schedule	95% of events set up and taken down within the agreed schedule	**No**
Event safety & crowd management	Safety and crowd-management plan for each public event	100% — an approved safety / crowd-management plan and adequate marshalling, fire and first-aid cover for every public event	**Yes**
Event utilities	Provision of power, water, sanitation and waste for events	Provided per the event plan; 98% availability during events	**No**
Post-event restoration	Restoration and cleanliness after each event	Areas restored and cleaned within [12] hours of event close	**No**
M. Long-Term Asset Management & Lifecycle (45-year term)			
Planned preventive maintenance	Completion of scheduled PPM tasks	≥ 98% of scheduled PPM tasks (marine-side and land-side) completed on time per the Asset	**No**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
		Management Plan	
Asset condition	Condition index of major asset groups	No major asset group (pontoons, piling, marine structures, dry-stack, M&E, buildings) permitted to fall below the agreed minimum condition threshold	**Yes**
Marine-side asset upkeep	Maintenance of Authority-built marine assets to required standard	Maintained to the same standards as land-side assets from the date of taking over; safety-critical defects rectified per the relevant KPI	**Yes**
Lifecycle / major maintenance	Adherence to lifecycle / major-maintenance schedule	Major maintenance and renewals (pontoon / finger / decking replacement, re-piling, periodic re-dredging, equipment overhaul, M&E renewal) executed per the Lifecycle Plan	**Yes**
Handback condition	Condition of the Whole Facility approaching expiry	Conforms to the divestment / Operation & Maintenance Requirements at the Transfer Date; condition survey and handback guarantee in place	**Yes**
N. 5-Star Hotel Development & Operations			
Star Categorization & Hospitality Audit	Maintenance of valid luxury classification and premium hospitality standards	The Concessionaire shall obtain and preserve official 5-Star Deluxe Classification from the Hotel & Restaurant Approval and Classification Committee (HRACC), Ministry of Tourism, Government of India. Annual third-party guest service audits must maintain a Net Promoter Score (NPS) ≥ 80%	**Yes**
Asset Structural	Maintenance of	Zero tolerance for structural or high-	**Yes**

Performance Indicator	Performance Measure	Minimum Performance Standard	Critical (Yes/No)
Integrity & Upkeep	structural, aesthetic, and M&E systems.	visibility aesthetic decay. Preventative maintenance must align with luxury hospitality standards; emergency engineering defects (HVAC, plumbing, fire safety) must be resolved within [2] hours, and standard aesthetic defects within [24] hours	
O. Tourism Business & Development Centre			
Operational Uptime & Public Service	Availability of tourist services, commercial spaces, and information hubs.	The Centre must maintain an operational uptime of ≥ 98% during designated operating hours. All public-facing digital interactive touchpoints, maritime kiosks, and navigation centers must be fully operational.	**No**
Safety & Crowd Management Flow	Adherence to maximum occupancy, safe exit, and visitor processing times.	Implementation of automated footfall-counting systems to prevent overcrowding. Emergency evacuation mock-drills must be conducted bi-annually in coordination with Mumbai Port security forces and coastal police.	**Yes**

5 Schedule II — Subjective Service-Quality Requirements

The following items shall be assessed as being under the reasonable control or influence of the Concessionaire and will be used to compute User Satisfaction in the quarterly survey (aligned to the Gold Anchor berth-holder questionnaire and the six Gold Anchor evaluation categories). The list may be amended in consultation between the Authority, the Concessionaire and the Independent Engineer.

Service-quality dimension	Items assessed
Approach, berthing & navigation experience	• Ease and safety of approach and berthing • Quality of berthing / mooring assistance

Service-quality dimension	Items assessed
	• Clarity of navigation marks, lighting and signage • Adequacy of fairway and berth dimensions
Marina infrastructure & facilities	• Condition of pontoons, fingers, cleats and fenders • Shore power and water provision • Wi-Fi / connectivity • Fuel, pump-out, haul-out and boatyard facilities • Dry-stack / storage (where provided)
Customer service & staff	• Courtesy and helpfulness of marina staff • Responsiveness of reception / harbour office • Efficiency of booking, check-in and billing • Quality of concierge / berth-holder support
Cleanliness & ambience	• Cleanliness of pontoons and common areas • Cleanliness and quality of ablutions / showers / laundry • General ambience and landscaping of the marina
Safety & security	• Perceived safety on pontoons and walkways • Lighting and surveillance • Access control and security of craft • Visibility and condition of safety equipment
Environmental practices	• Waste and recycling provision • Cleanliness of basin water • Visible commitment to Clean Marina / Blue Flag practice
Amenities & value for money	• Food & beverage and retail offer • Provisioning and chandlery • Car / trailer parking • Overall value for money of berthing and services

Service-quality dimension	Items assessed
Sailing school & training experience	• Quality and professionalism of instruction • Condition of training craft and safety equipment • Booking, scheduling and course information • Confidence in on-water safety cover
Dry-stack & boat-yard service	• Speed and reliability of launch / retrieval • Care of craft during handling and storage • Quality of yard, refit and technical services • Cleanliness and order of the yard
Club & events experience	• Quality of clubhouse and member facilities • Food & beverage experience • Organisation and safety of events / exhibitions • Atmosphere and overall destination experience

6 Schedule III — Consequences of Failure, Liquidated Damages and Material Breach

1. Measurement: Performance against each KPI shall be measured for each Quarter (the "Measurement Period"), unless Schedule I specifies otherwise, through the monthly Compliance Reports, verification by the Independent Engineer/Authority or any person appointed by the Authority, the Complaint Register, inspections and the berthing agreements and records of the Concessionaire.

2. Cure: Upon any KPI falling below its Minimum Performance Standard (an "SLA Default"), the Concessionaire shall rectify the default within the time notified by the Authority / Independent Engineer.

3. Liquidated damages – Critical KPIs: For each SLA Default in respect of a Critical KPI that is not cured within the stipulated time, the Concessionaire shall pay liquidated damages at the rate of 0.1% (zero point one per cent) of the Performance Guarantee, i.e. Rs. 4,60,000 (Rupees Four Lakh Sixty Thousand only) per day of default, until the default is cured.

4. Liquidated damages – Non-Critical KPIs: For each SLA Default in respect of a Non-Critical KPI that is not cured within the stipulated time, the Concessionaire shall pay liquidated damages at the rate of [0.05% (zero point zero five per cent)] of the Performance Guarantee per day of default, subject to a cap of 5% of the Performance Guarantee per Measurement Period.

5. Minimum Guaranteed Berth Occupancy: The consequences of failure to achieve the MGBO shall be exclusively as set out in Article 7.1(a)(xix) and Appendix 13 of the Agreement.

6. Material Breach: Each of the following shall constitute a Material Breach and a Concessionaire Event of Default entitling the Authority to proceed under Article 15 of the Agreement: (a) failure of the same Critical KPI in 2 (two) consecutive Measurement Periods, or its persistence beyond 3 (three) written notices; (b) liquidated damages for Non-Critical KPIs reaching the cap in 3 (three) consecutive Measurement Periods; (c) user satisfaction below the threshold specified in Part C for 3 (three) consecutive quarters after a corrective action plan; and (d) with immediate effect, loss of life, serious injury, major pollution or a serious navigational or security incident attributable to the default of the Concessionaire.

7. Recovery, set-off and carve-outs: Liquidated damages hereunder are a genuine pre-estimate of loss and shall be recoverable as a debt, by set-off against any amount payable by the Authority, or by appropriation from the Performance Guarantee / Deemed Performance Security. Payment of liquidated damages shall not relieve the Concessionaire of its obligation to remedy the default. No liquidated damages shall be levied for any default caused by a Force Majeure Event, events beyond the declared design basis, pre-agreed maintenance windows or a Concessioning Authority Event of Default, or for latent defects in the marine-side works constructed by the Authority within the defects-liability period.

Hotel and commercial Development

Hotel Development shall be undertaken in accordance with Applicable Laws, Good Industry practices and the provision of building construction codes widely followed in India. In case, Indian codes are not available then applicable UK or USA codes shall be used.

APPENDIX 15

ESCROW AGREEMENT

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

AMONGST

1. [● LIMIITED], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Senior Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Senior Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF MUMBAI PORT AUTHORITY, a body corporate constituted under the provisions of the Major Port Authorities Act, 2021 and having its Administrative Office at , Mumbai Port Authority, Port Bhavan, 3rd Floor, S.V.Marg, Fort, Mumbai 400001, hereinafter referred to as **"the Concessioning Authority"** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

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

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

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

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

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

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as Trustee

2.1.1 The Concessionaire hereby settles in trust with the Escrow Bank a sum of Rs. 100 (Rupees Hundred Only) appoints the Escrow Bank to act as trustee for the Concessioning Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are

specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and Operation of Escrow Account

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

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

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

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

2.4 Escrow Bank's Fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee

and expenses shall form part of the operating and maintaining expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.1 (c).

2.5 Rights of the Parties

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

2.6 Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

(a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
(b) all Tariff and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
(c) all Tariff collected by the Concessioning Authority in exercise of its rights under the Concession Agreement; and
(d) all payments by the Concessioning Authority, after deduction of any outstanding License Fee and Royalty; and
(e) termination Payment

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1.1 Withdrawals during Concession Period

At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the

relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

(f) all taxes due and payable by the Concessionaire for and in respect of the Project;
(g) all construction/implementation expenses relating to the Project/Project Facilities and Services, subject to limits if any set out under the Financing Documents;
(h) all expenses related to operations and maintenance of the Project including License Fee, subject to the ceiling, if any, set forth in the Financing Documents;
(i) towards payment of Royalty to the Authority;
(j) towards its debt service obligations under the Financing Documents;
(k) towards payment of other sums payable to the Concessioning Authority and liquidated damages, if any;
(l) towards any reserve requirements in accordance with the Financing Documents;
(m) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Withdrawals upon Termination

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon termination, be appropriated in the following order:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project;
(b) 90% of Debt Due excluding subordinated debt;
(c) all payments of outstanding Licence Fee, Royalties and damages certified by the Concessioning Authority as due and payable to it by the Concessionaire;
(d) outstanding debt service including the balance of Debt Due excluding subordinated debt;
(e) outstanding subordinated debt
(f) incurred or accrued operation & maintenance expenses;
(g) any other payments required to be made under this Agreement; and
(h) balance, if any, in accordance with the instructions of the Concessionaire;

Provided that no appropriations shall be made under Sub-clause (h) of this Clause 4.1.3 until a Vesting Certificate has been issued by the Concessioning Authority as per provision of Concession Agreement.

The provisions of this Clause 4.1 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 4.1.2 have been discharged.

4.1.3 Withdrawals upon end of Concession Period

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

(a) towards taxes and statutory dues payable by the Concessionaire;
(b) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
(c) all amounts due to the Concessioning Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:

(i) all the aforesaid payments due have been made and/or adequate reserves have been created in

respect thereof to the satisfaction of the Senior Lenders and the Concessioning Authority;
(ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioning Authority; and
(iii) Vesting Certificate has been issued by the Concessioning Authority under the provisions of Article18.5.

4.2 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

4.3 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business Days after receipt, deliver a copy to the Senior Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
(d) shall, within 5 (five) business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Senior Lenders' Representative in connection herewith.

5.4 No set off

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

5.5 Regulatory approvals

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

6. ESCROW DEFAULT

6.1 Escrow Default

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

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

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) Days prior notice to the Escrow Bank, the Concessioning Authority and the Senior Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

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

9. INDEMNITY

9.1 General indemnity

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

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

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

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

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

10.2 Waiver of sovereign immunity

The Concessioning Authority unconditionally and irrevocably:

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

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

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

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

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

10.6 No third-party beneficiaries

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

10.7 Survival

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

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

10.8 Severability

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

10.9 Successors and assigns

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

10.10 Notices

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

The Concessioning Authority:

The Chairman
Mumbai Port Authority
Port House, 2nd Floor,
Mumbai Port Authority,
S.V. Marg, Ballard Estate, Mumbai - 400 001
Telephone No.: 022-66564011
Email: chairman@mumbaiport.gov.in

The Concessionaire:

The MANAGING DIRECTOR
_____Ltd
_____
_____

Fax No. _____
Email: _____

The Senior Lenders/Senior Lenders representative:

_____Ltd
_____

_____

Fax No. _____
Email: _____

The Escrow Bank:
_____Ltd
_____
_____

Fax No. _____
Email: _____

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

10.11 Language

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

10.12 Authorised representatives

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

10.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioning Authority by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

1.

2.

APPENDIX 16

BASE CASE FINANCIAL MODEL (BCFM)

The model BCFM would be developed with the appropriate inputs from the financial and technical consultants. However, such Financial Model would need to be customized based on each project and its requirements. Such Financial Model would essentially include:

(i) estimated project cost,
(ii) License Fee and Royalty payable to the Concessioning Authority,
(iii) annual estimated Project revenue,
(iv) equity contribution,
(v) number of Yacht, yacht berth days, supply of utilities, services to be provided as per Project Facilities and Services - projections estimated by Concessionaire,
(vi) discounted net present value of the cash flows,
(vii) equity IRR,
(viii) debt equity ratio, and
(ix) debt service ratio.

Such Financing Model would be submitted by the Concessionaire and got approved by the Concessioning Authority at the time of Financial Close.

Note: Such format of the Financial Model shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.

APPENDIX 17

MONITORING ARRANGEMENT

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessioning Authority

S. No.	Obligations of the Port (Related DCA Article)	Whether any action required (Yes/ No)	If yes, give details of action taken
1 (a)	Meeting the Conditions Precedent (Article3.1) Procurement of clearance including from Ministry of Environment & Forests Handing over physical possession of Project Site/ Port Assets for the project (Stage wise, if so envisaged)		
1 (b)	Putting in place arrangement for provision of Supporting Project Infrastructure Informing the Concessionaire about the fulfillment of Conditions Precedent (Article3.1)		
2	In case conditions precedent are not complied within the specified time, details of extension of time availed (Article3.4)		
3	Recovery of liquidated damages for failure to fulfill Conditions Precedent (Article3.5)		
4	Appointment of Independent Engineer – 5.1		
5	Furnishing of comments/ observations on the Designs & Drawings to Independent Engineer – 6.2 (b)		
6	Grant applicable permits, approval and consents or render assistance as may be required by Concessionaire under concession agreement – 6.5 (a)		
7	Make available records of sub soil investigation, if requested – 6.5 (b)		
8	Assist the Concessionaire in obtaining immigration clearance, employment permits and residential premises for any foreign personnel engaged or employed by Concessionaire. – 6.5 (d)		

9	Assist Concessionaire or contractor to import into India all items of equipment and material required for the project. – 6.5 e		
10	If required on advice of Independent Engineer, suspend the construction works (Article6.6(a))		
11	On advice of IE, revoke the suspension after the rectifications (Appendix 7)		
12	If required as advised by Independent Engineer, concession authority may extend the construction phase, if the delay is not attributable by concessionaire – 6.2€		
13	To witness the tests along with Independent Engineer to ensure project meets with construction standards. – 6.7 (a)		
14	To verify the performance security is maintained as per Article4.1, or otherwise termination of agreement for non-maintenance of performance security as per Article15.1 (a)(xii)		
15	Recovery of liquidated damages if any from performance guarantee for failure to achieve milestones (Article6.9)		
16	In case of Change of Scope, whether procedures laid down in Article 6.8 is followed		
17	Ensuring issue of Completion Certificate by Independent Engineer (Article6.7)		
18	In case aggregate delay exceeds 180 days or LD exceeds 5% of project cost, terminate the agreement (Article6.9)		
19	Is any action required on monthly Inspection report from IE (Appendix 7)		
20	In case Concessionaire fails to complete the works on account of Force Majeure or due to reasons attributable to authority, reduce the scope of work (Article6.7(e))		
21	In event of non-compliance of conditions precedent within the time including the extended time if any termination of the agreement (Article3.6)		
22	Ensuring Operation of Escrow account in an orderly manner (Article9.5)		

23	Issue of Notice for a Force Majeure Event (Article14.5)		
24	In case of Force Majeure Event, whether extension of time has been granted (Article14.9 (b))		
25	In the event of termination due to Force Majeure Event, whether Termination Payment has been paid as per Article17.1(a)		
26	Issue of Notice on occurrence of an event of default (Article16.1)		
27	Informing Senior Lenders of Intent to Terminate (Article16.1)		
28	Termination Payment for termination due to Port Event of Default as per Article17.1(c))		
29	Exercising Rights and meeting obligations upon termination (Article16 and 17)		
30	Assessment of change in law and treatment of costs out of change in law (Article13.2(b))		
31	Amicably resolving disputes (Article19.1 & 19.2)		
32	Declaration of Project Facilities & Services as ready for operation in accordance with Section 37 of MPA Act (Article6.5 (c))		
33	Execution of Substitution Agreement within 30 days of notice from the Concessionaire as per Article12.3 (b)		
34	Any other project specific provision, observation, complaint or suggestion		

(Name of the Port)

Construction Stage Monitoring Report of (Name of the Project) for the month ended……..

Compliance of Obligations of the Concessionaire

S. No.	Obligations of the Concessionaire (Related DCAArticle)	Whether any action required (Yes/ No)	If yes, give details of action taken
1	Providing and maintaining the Performance Guarantee (Article4.1)		
2 (a)	Compliance of Conditions Precedent (Article3.1(a)) • Execution of Escrow Agreement and opening of Escrow Account • Procuring all Applicable Permits as per Appendix 8 • Submission of Financial Package, Financing Documents Financial Model and other Financial Close documents to Port • Submission of Confirmation of Representation & Warranties by Consortium Members • Submission of legal opinion with respect to the authority of Concessionaire • Informing Concessioning Authority about fulfillment of Conditions Precedent (Article3.2)		
3	In case Conditions Precedents are not complied within the specified time, details of extension of time availed (Article3.5)		
4	Submission of Designs and Drawings to the Independent Engineer &Concessioning Authority (Article6.2 and Appendix 6)		
5	Arrangement of financial and other resources as per Financing Plan as evidenced by Escrow Account (Article6.4(a))		
6	Carry out works in compliance with the Construction Standards (Article- 6.4 (b)		
7	Obtain Applicable Permits and comply with Applicable Laws. - 6.4 (d)		
8	Providing access to Port representatives for inspections for ascertaining compliance of requirements (Article6.4(e))		
9	Submission of Monthly Progress Reports to		

	Independent Engineer (Article6.4(f))		
10	Removal of Defects/ deficiencies as observed by Independent Engineer (Article6.4(f))		
11	Ensure safe and timely construction and completion of the Project/ - 6.4 (h)		
12	At least 60 days prior to the likely completion of the Project, notify the Independent Engineer of the date when it intends to commence commercial operations - 6.7 (a)		
13	Providing assistance to Independent Engineer for conducting all requisite Tests on structures/ equipment etc., - 6.7 (a)		
14	To obtain Provisional Certificate of Completion as per Article6.7(d)		
15	To complete all outstanding items listed in Punch List within 90 days or extended period by Concessioning Authority. – 6.7 (d)		
16	Deleted		
17	Pay License fee annually and Royalty annually – 9.1 (a) and 9.2		
18	Pay liquidated damages to Concessioning Authority, if applicable. – 6.9		
19	Maintenance of Insurance as per Article12.1(c)		
20	In case of Execution of substitution agreement, whether notice has been issued by the Concessionaire to the port as per Article12.3 (b)		
21	Whether equity Holding requirements are met by the lead member/members of the bidder consortium as per Article11.2		

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended……..

Compliance of Obligations of the Concessionaire

S. No.	Obligations of the Concessionaire (Related DCA Article)	Whether any action required (Yes/ No)	If yes, give details of action taken
1	Prompt commencement of operations after "Ready for Operation" declaration (Article7.1(a)(i)(a))		
2	Operation of Project Facilities as per "Project Requirement" (Article7.1(a) (i)(c))		
3	Achieving Performance Standards (Article7.1(a) (i)(d))		
4	Compliance of O&M and Safety Standards (Article7.1(a) (i)(e))		
5	Rapid & Effective response in the event of accident/ Emergency (Article7.1(a) (i)(f))		
6	Replacement and repair of project facilities in a timely manner (Article7.1(a) (i)(g)		
7	Manage & Operate Project Facilities on "First Come First Served "basis except for Priority & Preferential berthing as per GOI guidelines (Article7.1(a) (i)(h))		
8	Maintenance of Proper Records relating to Revenue and operation of Project Facilities (Article7.1(a) (i) and 9.4)		
9	Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws (Article7.1(a) (i) (j))		
10	Prevention of encroachment / unauthorized use of Project Facilities (Article7.1(a) (i)(l))		
11	Repair & Maintain all Project Facilities as per Agreement provisions &Good Industry Practice at all times during the Concession Agreement.7.1(a)(ii)		
12	Repair, Replace or Restore the damaged Project Facilities at its own costs.7.1(a)(iv)		
13	Obtaining prior written permission of Concessioning authority for removal of assets Article7.1(a)(v)		
14	Replacement of equipment/ assets as per Good Industry Practice (Article7.1(a) (iii))		
15	Compliance with Monthly Reporting Requirements (Article7.1(a) (viii))		
16	Cooperation to Independent Engineer-in access for inspection for safety audit once in a year (Article7.1(a) (vii))		

17	Cooperation to port representatives for inspection and review of operations also to compliance with requirements of Agreement (Article7.1(a)(vii))		
18	Installation & Operation of specified computer system and Network as specified by Concession Authority (Article7.1(a) (ix)		
19	Ensuring the prescribed Security Arrangements conforming to ISPS code (Article7.1(a) (x)		
20	Employment of personnel of foreign origin only after requisite approvals from Government of India (Article7.1(a) (xi))		
21	Employ qualified and skilled personnel.7.1(a)(xi)		
22	Meeting Minimum Guaranteed Cargo requirements (Article7.1(a) (xii)) – Not Applicable		
23	To recover tariff from users of the project facilities as per Tariff Order Notification and deposit all Tariff in Escrow Account (Article8.1)		
24	If requested by CA, collect the cess and charges from the users on behalf of Concessioning Authority 8.2		
25	Make timely payments to Concessioning Authority viz. Royalty &License fees (Article9.1(a) & 9.2 (b)		
26	To operate Escrow Account as per priority of payments as per Article9.5(a)		
27	Meeting any claim/ action/ suit etc. alleging loss/ destruction of goods (Article7.1(a)(xiii))		
28	Inform Concessioning Authority if any Direct or indirect change of management of concessionaire as per Article11.2		
29	Payment of all taxes/ duties/ levies etc., to the Government Authorities (Article12.1(b)		
30	Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice (Article12.1(c))		
31	Providing copies of insurance policies to the Port (Article12.1(c) (iii)		
32	Utilisation of money received under insurance policies as per terms of Agreement (Article12. 1(c) (iv)		
33	Deleted		
34	Ensuring conduct of Conditional Survey by Independent Engineer and compliance of remedies thereof before expiry of concession period. (Article12.1(g))		
35	Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey [Article12.1 (g)		

	ii]		
36	Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Port (Article15)		

(Name of the Port)

Operation Stage Monitoring Report of (Name of the Project) for the month ended…….

Compliance of Obligations of the Concessioning Authority

S. No.	**Obligations of the Port (Related DCA** Article**)**	**Whether any action required (Yes/ No)**	**If yes, give details of action taken ***
1	To get from the Concessionaire copies of "as built" design and drawings maintenance schedule of equipment etc. as reviewed by Independent Engineer as per (Appendix 6) & Article18.2 (c)		
2	Release of Performance Security after 6 months from the COD (Article4.1)		
3	Scheduling entry, berthing and sailing of the vessels, pilotage and towage on a non-discriminatory basis subject to priority berthing norms. – Article 7.1(c)(i)(a)		
4	Maintenance of entrance channel draft Article 7.1(c) (i)(b) Maintenance of required draft alongside berth (Article7.1(c) (i) (d))		
5	Provide waterside safety and safety of navigation; - Article7.1 (c) (i) (c)		
6	Provision and maintenance of all general port infrastructure other than covered under the concession – Article7.1 (c) (i) (f)		
7	Grant approvals/ consents sought by the Concessionaire as required under the agreement Article7.1 (c) (ii)		
8	Evolve mutually acceptable mechanism for sharing the common costs by existing and future terminal operators Article7.1 (c) (i) i		
9	Provide access to all applicable infrastructure facilities and utilities including water, electricity etc. Article7.2		
10	Review performance standards from the monthly report submitted by Concessionaire and take remedial action including recovery of liquidated damages as per Article7.3		
11	To operate escrow account as per priority of payments as per Article9.5(a)		

12	Whether equity Holding requirements are met by the lead member/ members of the Bidder consortium as per Article11.2		
13	Assistance to Concessionaire by giving recommendation letter for getting applicable permits Article12.2 (a)		
14	Pay levy (or) levies including increase in taxes, duties etc., on account of port assets payable to State Govt. Article12.2 (b)		
15	Shall not operationalise competing facility as per Article12.2 (c)		
16	Issue notice of Force Majeure In the event of occurrence of any Force Majeure event (Article14.5)		
17	Extension of time for performing obligations due to occurrence of Force majeure (Article14.9 (b))		
18	Compliance of provisions of Article14.10 in the event of force majeure continuing beyond 120 days		
19	Payment of Termination Payment in the event of termination due to force majeure event as per Article17.1(a) Payment of Termination Payment in the event of termination due to Concessionaire event of default as per Article17.1(b) Payment of Termination Payment in the event of termination due to Concessioning authority event of default as per Article17.1(c)		
20	Authorize the Concessionaire to collect cesses and charges including infrastructure cess if required and remit the same to Concessioning authority if required (Article8.2 and 8.5)		
21	Initiate action for amicably resolution of disputes (Article19.1 and 19.2)		
22	Any other observation, complaint or suggestion		
23	Payment of Compensation to Senior Lenders (Article17.4)		
24	Issue of Consultation Notice and Compliance of remedial process in case of Event of Default on the part of Concessionaire (Article15.3 & 15.4)		
25	Informing Senior lenders of intent of termination by issuing a copy of Termination Notice to them on occurrence of force Majeure/ Event of Default (Article15.7 and 16)		

Key Performance Indicators (KPI)/Performance Standards

(Name of the Port)

Construction/ Operation Stage Monitoring Report of (Name of the Project) for the month ended……. (Prepared by Port to the Ministry)

I. Basic Data of the project

S. No.	Project Parameters	Details
1.	Name of the Concessionaire	
2.	Percentage of equity holding in case of consortium	
3.	Payment of Royalty	
4.	Date of Issue of Letter of acceptance by the port to Concessionaire	
5.	Date of signing of Concession Agreement	
6.	Time duration for fulfilling the condition precedent as per concession agreement (a) By Concessionaire (b) By Concessioning Authority	
7.	Actual Date of award of concession after fulfilling condition precedent	
8.	Date of starting of commercial operation	
9.	Estimated cost	
10.	Actual Cost	
11	Capacity	
12	Project details like length of berth, design vessel size can be handled, equipment installed, backup area etc.	
13	Present tariff rate	
14	MGT if any as per concession agreement	
15	number of Yacht handled, yacht berth days, utilities supplied, services provided during this month	
16	Cumulative number of Yacht handled, yacht berth days, utilities supplied, services provided during the financial year	
17	Any other remarks	

APPENDIX 18

KEY PERFORMANCE INDICATORS FOR CONCESSIONING AUTHORITY

(The project specific minimum performance Standards for Concessioning Authority are presented in below table.)

No.	Key Performance indicator	Indicative Norms	Description
1.	Handover of project site	Not less than 30 days' written notice of the intended handover date of each element, with as-built drawings, test certificates and, for dredging, certified survey data.	
2.	Maintenance of the approach channel	Channel maintained at not less than the Declared Channel Depth	
3.	Waterside safety and safety of navigation	Port Control VHF watch maintained 24x7 over the harbour approaches; distress and safety traffic concerning craft bound to or from the Marina relayed to MRCC / Indian Coast Guard without delay	
4.	Scheduling of vessel movements	Where permission of the Deputy Conservator is required for movement of craft, permission granted on a non-discriminatory basis within [2] hours of request, and seasonal / standing permissions for berth-holders within 7 days.	
5.	Access road to the Project site	Access road available for 99% of the project duration	
6.	Issuance of Completion Certificate	Conveyed within 30 days of a Complete Application.	
7.	Grant of approvals and consents	Decision conveyed within 30 days of a Complete Application.	
8.	Recommendatory letters and best-effort assistance	Letter issued within 15 days of written request.	
9.	Right of way for utilities	Right of way granted within 30 days of a Complete Application.	
10.	Responses to representations and notices	Reasoned response within 30 days of receipt of a representation or Force Majeure notice.	

APPENDIX 19

SUPPORTING PROJECT INFRASTRUCTURE

Concessioning Authority shall complete the marina basin with breakwater and approach trestle connecting the shore. Authority shall carry out the dredging in the basin to - 4.5 m CD on or before January 2030.

APPENDIX 20

COMPLIANCE TO GREEN PORTS POLICY

The following green measures for the Project shall be provided by the Concessionaire as part of Project Facilities and Services:

S. No.	Measures for compliance by Concessionaire
1	Installation of equipment for monitoring environmental pollution
2	Installation of dust suppression systems

In addition, the Concessionaire shall also comply with the requirements of Ministry of Environment, Forest and Climate Change (MoEFCC) and State Pollution Control Board, Maharashtra. **All buildings shall comply with the Green Building Policy.**

APPENDIX 21

Deleted

APPENDIX 22

(See Article21.2.2)

PANEL OF CHARTERED ACCOUNTANTS

1. *Panel of Chartered Accountants*

Pursuant to the provisions of Article21.2.2 of the Agreement, the Concessioning Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Appendix-22

2. *Invitation for empanelment*

2.1 The Concessioning Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Concessioning Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the biodata of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five Crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. *Evaluation and selection*

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Concessioning Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Concessioning Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. *Consultation with the Concessionaire*

The Concessioning Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Concessioning Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Concessioning Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. ***Mutually agreed Panel***

5.1 The Concessioning Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Concessioning Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Appendix-22.

APPENDIX 23

(See Article*18.5)*

VESTING CERTIFICATE

1. The Chairman of Mumbai Port Authority represented by _____ (the "**Concessioning Authority**") refers to the Concession Agreement dated _____ (the "**Agreement**") entered into between the Concessioning Authority and _____ (the "**Concessionaire**") for the Project **'Design, Build, Finance, Operate and Transfer of Mumbai Marina at Victoria Dock, Mumbai on PPP'** at Mumbai Port.

2. The Concessioning Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the obligations set forth in Article18.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Concessioning Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Concessioning Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the obligations set forth in Article18.2 and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature
Name
Designation
Address

AGREED, ACCEPTED AND For and on behalf of Concessioning Authority by:

Signature
Name
Designation
Address

In presence of

A)
B)

APPENDIX 24
REPLIES TO PRE BID QUERIES ON REQUEST FOR PROPOSAL (RFP)