
MASTER AGREEMENT

BETWEEN

INDIA PORTS GLOBAL LIMITED
(AUTHORITY)

AND

{....} and {....}¹

(THE SELECTED BIDDER)

FOR

Management, Operation and Maintenance (**the 'MOM'**) of the Multipurpose and Container Terminals at First Development Phase of Shahid-Beheshti-Chabahar Port, Islamic Republic of Iran

Dated _____

¹ In the event that the selected bidder is a joint venture / consortium of two or more bidders, each member of such joint venture / consortium is to execute this Agreement and the name of each such member of the joint venture / consortium shall be accordingly inserted. In the event that the selected bidder is a single entity, the name of such single entity shall be inserted and the other placeholder shall be deleted.

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THE MASTER AGREEMENT

THIS **MASTER AGREEMENT** (this "**Agreement**") is made at _____ and entered into on this _____ day of _____.

BETWEEN:

INDIA PORTS GLOBAL LIMITED, a company within the meaning of the Companies Act, 2013, with Corporate Identification Number U61100MH2015GOI261274, and having its registered office at 1107, Raheja Centre, 214, FPJ Marg, Nariman Point, Mumbai – 400021, Maharashtra, India (hereinafter referred to as the "**Authority**" or the "**Lessee**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors – in – interest and assigns) of the **ONE PART**;

AND

[•]², a company within the meaning of the Companies Act, 2013, with Corporate Identification Number [•], and having its registered office at [•] (hereinafter referred to as {the "**Selected Bidder**"}/{"**Lead Member**"}, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors – in – interest and permitted assigns) {and [•], a company within the meaning of the Companies Act, 2013, with Corporate Identification Number [•], and having its registered office at [•] (hereinafter referred to as the "**Other Member**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors – in – interest and permitted assigns)} {the Lead Member and the Other Member are collectively referred to as the "**Selected Bidder**"³ of the **OTHER PART**.

The Authority and the Selected Bidder shall wherever the context requires be referred to collectively as "**Parties**" and each individually as a "**Party**".

WHEREAS:

- A. Aria Banader Iranian Port and Marine Services Limited ("**ABI**") has granted to the Authority (previously known as India Ports Global Private Limited), a right to equip and operate the Terminal Area to provide the Terminal Services under 'the Contract for Equipping and Operation of Multipurpose and Container Terminals at First Development Phase of Shahid-Beheshti-Chahabar Port' executed on May 23, 2016 at Tehran ("**Contract**") as appended hereto as **Exhibit – 1** hereto.
- B. The Authority had resolved to select a private party to take minority shareholding in the Project SPV of the Authority through an entity to be incorporated in Iran by such private party and consequently by virtue of its shareholding in the Project SPV, such entity of the private party will carry out the management, operation and maintenance of the Terminal Area. Accordingly, the Authority had invited proposals in India by its Request for Qualification No. {.....} (the "**RFQ**") for short listing of bidders and had shortlisted certain bidders.
- C. The Authority had invited offers from the short-listed bidders by its Request for Proposals

² In the event, the selected bidder is a consortium, the word 'Lead Member' to be used. In case of single entity, the 'Selected Bidder' to be used.

³ To be retained and filled up if the selected bidder is a consortium.

No. {.....} (the "RFP") and selected {name of the selected bidder/ consortium comprising and} as the 'Selected Bidder' vide its Letter of Award dated {.....} ("LOA").

- D. Pursuant to the LOA, the Selected Bidder has agreed to execute this Agreement and perform the obligations hereunder as per the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties intending to be bound legally, agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 Capitalized terms used herein but not defined under this Agreement shall have the meanings as ascribed to them under the Contract, unless repugnant to the subject, matter or context thereof. 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:
- 1.1.1 "**ABI**" shall have the meaning as ascribed to it in Recital A.
- 1.1.2 "**Agreement**" means this agreement as of date hereof including the Recitals, Schedules, Annexure, Appendix hereto, as may be amended, supplemented or modified in accordance with the provisions hereof.
- 1.1.3 "**Agreement Period**" means the period of this Agreement as specified in Article 2.2 of this Agreement.
- 1.1.4 "**Annual Fixed Management Fees**" shall have the meaning as ascribed to the term under Article 3.8 of this Agreement.
- 1.1.5 "**Applicable Laws**" means:
- (i) with respect to any matter in India, all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.
 - (ii) with respect to any matter in Islamic Republic of Iran, all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in Islamic Republic of Iran, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

- 1.1.6 "**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.
- 1.1.7 "**Approved Bank**" means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;
- 1.1.8 "**Associate**" means, in relation to the Selected Bidder, a Person who controls, is controlled by, or is under the common control with the Selected Bidder (as used in this definition, the expression "**control**" means, with respect to a Person, the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of any relevant Person, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to such relevant Person;
- 1.1.9 "**Authority Conditions Precedent**" shall have the meaning as set out under Article 4.2.1.
- 1.1.10 "**Authority Event of Default**" shall have the meaning as set out under Article 9.2.
- 1.1.11 "**Authority Representative**" shall mean the representative appointed by the Authority from time to time as per Article 2.4 of this Agreement.
- 1.1.12 "**Change in Law**" shall mean repeal or amendment or change in application of the current laws, regulations (for example, any tax laws and regulations), consents or approvals, or legislation of new laws and regulation after the date of Commercial Operation Date.
- 1.1.13 "**Commercial Operation Date**" shall mean the commercial operation date declared as per the terms of the Contract.
- 1.1.14 "**Consent Letter**" shall have the meaning as ascribed to the term under the RFP.
- 1.1.15 "**Contract**" shall have the meaning as ascribed to it in Recital A.
- 1.1.16 "**Execution Date**" shall mean the date of execution of this Agreement.
- 1.1.17 "**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 Terminal Area, physical encumbrances and encroachments on the Terminal Area or the Terminal Facilities.
- 1.1.18 "**Event of Default**" shall mean a Selected Bidder Event of Default or an Authority Event of Default, as the context may require.

- 1.1.19 “**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 Terminal Facilities.
- 1.1.20 “**Government Authority**” means the Government of the Islamic Republic of Iran or the Republic of India (as may be relevant), 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 Authority, the Selected Bidder, the Operator, the Terminal Area, the Terminal Facilities or any portion thereof.
- 1.1.21 “**Handover Date**” shall have the meaning as ascribed to it in the MOM Agreement.
- 1.1.22 “**Intellectual Property Rights**” shall mean the intellectual rights and ownership related to the technical know-how and operation software of the Terminals, obtained or made and developed by the Selected Bidder or the Operator.
- 1.1.23 “**LOA**” shall have the meaning as ascribed to it in Recital C.
- 1.1.24 “**Local Partner**” shall mean a Person domiciled in the Islamic Republic of Iran as contracted by the Selected Bidder to hold the legal and beneficial ownership of up to 49 (forty nine)% of the voting securities of the Operator, as per the terms and conditions of the RFP.
- 1.1.25 “**Management Fee**” shall mean collectively the Annual Fixed Management Fees and the Variable Management Fees payable as per Article 3.8 of this Agreement.
- 1.1.26 “**Management Control**” means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of any relevant Person, whether through the ownership of voting securities, by contract or otherwise and the power to elect or appoint more than 50% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to such relevant Person.
- 1.1.27 “**Minimum Guaranteed Traffic**” shall have the meaning ascribed to it in Article 3.7.
- 1.1.28 “**Miscellaneous Services**” shall mean the services which the Operator provides upon receiving the relevant charges in relation to part of the contract services to the clients and shipping lines at the container and multipurpose terminals in addition to the items stipulated in the tariff booklet including, stevedoring, cargo handling, terminal handling services and warehousing services.
- 1.1.29 “**MOM Agreement**” mean the Management, Operation and Maintenance Agreement in the form and format as set out in **Schedule – 1** hereto.
- 1.1.30 “**Month**” means a calendar month as per Gregorian calendar in India.

- 1.1.31 "**Operator**" shall have the meaning as set out under Article 3.3.1.
- 1.1.32 "**Organisation**" shall mean Ports and Maritime Organization or any other organization which will be port administrator of the Islamic Republic of Iran in future in accordance to the Applicable laws.
- 1.1.33 "**Performance Security**" shall have the meaning as set out in Article 5.1 hereto.
- 1.1.34 "**Permission**" shall have the meaning as set out under Article 3.1.
- 1.1.35 "**Person**" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Authority or agency or any other legal entity.
- 1.1.36 "**Port**" means Chabahar – Shahid Beheshti port located in the Iranian Sistan & Baluchestan Province of Islamic Republic of Iran.
- 1.1.37 "**Project**" shall mean the management, operation and maintenance of the Terminal Area and provision of the Terminal Services in the Terminal Area.
- 1.1.38 "**Project SPV**" shall mean a company to be incorporated by the Authority in Iran, which will be assigned the Contract.
- 1.1.39 "**Rs.**" / "**Rupee**" / "**INR**" means the lawful currency of India.
- 1.1.40 "**RFP**" shall have the meaning as ascribed to it in Recital C.
- 1.1.41 "**RFQ**" shall have the meaning as ascribed to it in Recital B.
- 1.1.42 "**Selected Bidder Conditions Precedent**" shall have the meaning as set out under Article 4.1.
- 1.1.43 "**Selected Bidder Event of Default**" shall have the meaning as set out under Article 8.1.
- 1.1.44 "**Selected Bidder Representative**" shall mean the representative appointed by the Selected Bidder from time to time as per Article 2.5 of this Agreement.
- 1.1.45 "**Shareholders Agreement**" mean the Shareholders Agreement in the form and format as set out in **Schedule – 2** hereto.
- 1.1.46 "**Terminal(s)**" shall mean the Terminal/Berth in the Terminal Area.
- 1.1.47 "**Terminal Area**" means the building site and existing property within the Chabahar port area assigned to the Authority by ABI including: jetty docks, container terminal (about 640 meters in length), multipurpose terminal (about 600 meters in length), and multipurpose cargo yards, administration and welfare buildings, workshops, installations, public utility branching, etc. whose detailed specifications have been provided in Annex – 4 of the Contract.
- 1.1.48 "**Terminal Facilities**" shall mean collectively:

- (a) the facilities to be made available by ABI in connection with the Project, as detailed in Annex 7 (Infrastructure Facilities) of the Contract;
- (b) all the equipment to be made available by the Authority/the Project SPV in connection with the Project, as detailed in Annex – 9 of the Contract; and
- (c) all other infrastructure, equipment, facilities as may be installed in the Terminal Area from time to time.

1.1.49 **“Terminal Services”** shall mean loading and unloading of cargos and containers from/to ships, planning and storage of cargos and containers in multipurpose and container yards, reefer services, storage of containers containing dangerous goods according to requirements of IMDG CODE, stevedoring, warehousing, cargo and container unloading and loading from/to land transportation vehicles including road and railway vehicles, relocation of containers within the exclusive terminals and yards, stowing and offloading of consignments in the containers, document processing operations and electronic exchange of data and documents with customers and respective establishments and all usual and normal operations in the ports according to the common practice of the leading world ports and shall include the Miscellaneous Services.

1.1.50 **“Transaction Documents”** shall mean this Agreement, the MOM Agreement, the Shareholder Agreement and any other document which may be required thereunder.

1.1.51 **“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 Selected Bidder or the Operator (as the case may be).

1.1.52 **“Variable Management Fee”** shall have the meaning as ascribed to the term under the MOM Agreement, as the case may be.

1.2 **Other Defined Terms in this Agreement**

Any word or phrase defined in the body of this Agreement as opposed to being defined in Article 1.1 shall have throughout this Agreement, the meaning assigned to it in such definition, unless the contrary is expressly stated or the contrary clearly appears from the context.

1.3 **Construction**

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

- (a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles of this Agreement and the Schedules, the Articles shall prevail;

- (c) Between the Schedules and the Exhibits, the Schedules shall prevail;
 - (d) Between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (e) Between the written description on the drawings and the specifications and standards, the latter shall prevail;
 - (f) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and,
 - (g) Between any value written in numerals and that in words, the latter shall prevail;
- 1.3.2 in the event that the Selected Bidder is a joint venture / consortium of the bidders, each of the Lead Member and the Member shall be jointly and severally liable to discharge all duties, obligations and responsibilities of the Selected Bidder under this Agreement;
- 1.3.3 references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.3.4 references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- 1.3.5 references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.3.6 the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.3.7 the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- 1.3.8 any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.3.9 any reference to **"hour"** shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00

(five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30(five thirty), 6.30 (six thirty), 7.30(seven thirty) and so on being hours on the half hour of the clock;

- 1.3.10 any reference to a day shall mean a reference to a calendar day. Any reference to a month shall mean a period of 30 (thirty) days starting from the relevant date. Any reference to a year shall mean a period of 365 (three hundred and sixty five) days starting from the relevant date;
- 1.3.11 reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which banks in Mumbai are generally open for business;
- 1.3.12 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; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- 1.3.13 the words importing singular shall include plural and vice versa;
- 1.3.14 references to any gender shall include the other and the neutral gender;
- 1.3.15 "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.16 references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.3.17 save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- 1.3.18 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- 1.3.19 the Schedules, the Exhibits and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- 1.3.20 references to Recitals, Articles, Clauses, Sub-clauses, Provisos, Schedules or Exhibits in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos, Schedules and Exhibits of or to this Agreement;
- 1.3.21 the liquidated 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 (the "**Liquidated Damages**");
- 1.3.22 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;
- 1.3.23 the rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof or Doctrine of *Contra Proferentem*, shall not apply to this Agreement;
- 1.3.24 references to a Party shall, where the context permits, include such Party's respective Affiliates, legal representatives, successors and permitted assigns; and
- 1.3.25 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise.

1.4 **Language**

The governing language of this Agreement shall be English. Further any communication, notice, letter, etc. issued/exchanged with respect to, in connection with or pursuant to this Agreement shall be in English language only.

ARTICLE 2 SCOPE OF THE AGREEMENT

2.1 **Scope**

- 2.1.1 The scope of this Agreement (the "**Scope of the Agreement**") shall mean management, operation and maintenance of the Terminal Area in accordance with the provisions of this Agreement including but not limited to:
- (a) operations and maintenance of container terminal (length – 640 meters) and multipurpose terminal (length – 600 meters);
 - (b) development of support infrastructure (drainage system, firefighting, utility etc.) for the berths and paved back up area (33 Ha for container berth & 37 Ha for multi-purpose berth);

- (c) procure and implement operational, financial software and integrated management system at its own cost and integration of the same with ABI's software;
- (d) develop market for the port so as to meet minimum traffic guarantees;
- (e) work in consonance with the Authority/the Project SPV during the installation of all equipment for ensuring efficient operation of the terminal;
- (f) refurbishment of the office with basic amenities like furniture, cooling & heating system to name a few and other necessary assets or facilities within the port premises at the space provided by ABI/the Project SPV at its own expense;
- (g) develop, obtain and maintain applicable permits, insurances, SoPs and comply with all related standards, guidelines, covenants and executive guidelines as approved by ABI;
- (h) provide and implement preventive maintenance and Total Productive Maintenance (TPM) plans for the terminal equipment, installations, premises, areas, places and buildings based on the Good Industry Practice, through the Project SPV at its own expense (and acceptable to ABI / Organization); and
- (i) undertakes to comply with all related standards, conventions, codes and executive guidelines approved by the Organization which are related to Health, Safety and Environment (HSE), firefighting, security, information technology, repair and maintenance of superstructures and infrastructures.

2.1.2 The Selected Bidder shall carry out the Scope of the Agreement and provide the Terminal Services through the Operator.

2.1.3 The Selected Bidder shall ensure that it performs its obligations under this Agreement in compliance with the Contract. The Selected Bidder shall not do anything or permit anything in the Terminal Area which may result in violation of any of the terms of the Contract.

2.2 **Agreement Period**

This Agreement shall come into effect on the Execution Date and shall expire upon completion of a period of 10 (ten) years from the Commercial Operation Date, unless terminated earlier in accordance with the provisions of this Agreement.

2.3 **Commercial Operation Date**

On or before occurrence of the Commercial Operation Date under the Contract, the Authority shall intimate the Selected Bidder about the same. The Selected Bidder Representative shall commence the Terminal Services from the Commercial Operation Date.

2.4 **Authority Representative**

2.4.1 The Authority shall appoint a person as the Authority Representative to act on behalf of the Authority for all purposes in connection with this Agreement. The Authority Representative shall have no authority to amend this Agreement or to relieve either Party of any of its duties, obligations or responsibilities under this Agreement, unless expressly authorized by the Authority by way of a written notice to the Selected Bidder.

- 2.4.2 The Authority may replace the Authority Representative with such person as it may deem fit by giving a reasonable advance written notice to the Selected Bidder.
- 2.4.3 The Authority Representative shall be the Authority's primary point of contact with the Selected Bidder in relation to the execution of its obligations under this Agreement. The duties of the Authority Representative shall include, but not be limited to the following:
- (i) interpretation of all documents comprising this Agreement, the MOM Agreement, Shareholders Agreement and the Contract;
 - (ii) inspection, acceptance or rejection of the Terminal Services and performance of other obligations by the Selected Bidder or its Operator under this Agreement;
 - (iii) endorsing any documents required to be issued by the Authority under this Agreement or the MOM Agreement;
 - (iv) review other documents, applications and requests submitted by the Selected Bidder in accordance with this Agreement.
- 2.4.4 Notwithstanding any inspection, approval or certification by the Authority Representative, the Selected Bidder shall not be relieved of any of its obligations or liabilities under this Agreement, including the obligation to provide the Terminal Services and the rectification of any defects.
- 2.4.5 The Selected Bidder shall give reasonable notice to the Authority Representative for any instruction, direction or approval which it requires for execution of its obligations under this Agreement, to enable the Authority Representative to issue timely instructions, directions or approvals, such that the performance of the obligations by the Selected Bidder are not delayed.
- 2.5 **Selected Bidder Representative**
- 2.5.1 Within a period of 15 (fifteen) days from the Execution Date, the Selected Bidder shall submit to the Authority for its approval, the name and details relating to qualification and experience of the person whom the Selected Bidder proposes to appoint as the Selected Bidder Representative. If the Authority objects to the appointment of the proposed representative within 10 (ten) days of receipt of a request from the Selected Bidder, the Selected Bidder shall propose a replacement within 30 (thirty) days of such objection. This process shall continue until the representative proposed by the Selected Bidder is approved by the Authority.
- 2.5.2 The Selected Bidder may replace the Selected Bidder Representative with such person as it may deem fit by giving 15 (fifteen) days prior written notice to the Authority.
- 2.5.3 The Selected Bidder Representative shall coordinate all matters relating to this Agreement with the Authority and receive all instructions, notices, approvals, certificates and any other communication from the Authority or the Authority Representative.

- 2.5.4 The Selected Bidder Representative shall have full authority to act on behalf of the Selected Bidder.
- 2.5.5 The Selected Bidder shall be bound by and fully liable for the acts or omissions of the Selected Bidder's personnel.

ARTICLE 3 GRANT OF PERMISSION TO THE SELECTED BIDDER

3.1 Grant of Permission

Subject to subscription of the Equity Share Capital of the Project SPV by the Subsidiary of the Selected Entity and fulfilment of the Selected Bidder Conditions Precedent, the Authority hereby grants the permission ("**Permission**") to the Selected Bidder to carry out the management, operation and maintenance of the Terminal Area as per the Scope of the Agreement and to provide the Terminal Services, through the Operator. In consideration of the same, the Authority shall pay the Annual Fixed Management Fee to the Selected Bidder as per the terms and conditions of this Agreement and the Project SPV shall pay the Variable Management Fee to the Operator as per the terms and conditions of the MOM Agreement and the Selected Bidder and the Operator respectively accept the said payment of the Annual Fixed Management Fee and the Variable Management Fee as sufficient consideration for the Selected Bidder to fulfil its obligations under this Agreement and the Operator's obligations under the MOM Agreement.

3.2 Acceptance by the Selected Bidder

The Selected Bidder hereby accepts the Permission and agrees and undertakes to carry out the management, operation and maintenance of the Terminal Area as per the Scope of the Agreement and to provide the Terminal Services, through the Operator. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Selected Bidder shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, manage, operate, and maintain the Terminal Area and the Terminal Facilities.

3.3 Incorporation of the Operator and selection of the Local Partner

3.3.1 The Selected Bidder shall, either directly or through any of its Associates, incorporate a joint stock company ("**Operator**") in Iran to carry out the Scope of the Agreement and shall hold the Management Control in the Operator.

3.3.2 The Selected Bidder shall or shall cause its Associates to issue or Transfer up to 49% of the voting securities ("**Local Partner Securities**") in the Operator to the Local Partner, on or prior to the execution of the MOM Agreement by the Project SPV and the Operator. It is clarified that the Selected Bidder / its Associate(s) is required to submit the details pertaining to the Local Partner including the Consent Letter and all requisite particulars of the Local Partner to the Authority, as per the terms and conditions of the RFP, within a period of the 30 (thirty) days from the Execution Date. The Local Partner shall not hold more than 49% of the voting securities of the Operator.

For the avoidance of any doubt, it is hereby clarified that Selected Bidder shall ensure that the Local Partner shall continue to hold the legal and beneficial ownership over such number of voting securities in the Operator so as to retain the Local Partner Securities during the subsistence of this Agreement.

3.3.3 The Selected Bidder shall obtain the prior written approval of the Organization and the Authority, prior to the issuance or Transfer of the Local Partner Securities in the Operator to the Local Partner, which approval shall be granted at the absolute discretion of the Authority and / or the Organization.

3.3.4 The responsibility to look for, select and contract with the Local Partner shall be solely of the Selected Bidder as per the commercial terms acceptable to them mutually. The Authority or the Project SPV shall not have any liability, responsibility or obligations in this regard nor shall the Selected Bidder be absolved from any of its obligations, responsibilities and other aspects of this Agreement.

3.3.5 The Operator shall be solely responsible for obtaining the Applicable Permits as per Applicable Laws to carry out its obligations under the MOM Agreement.

3.4 **Execution of the MOM Agreement**

3.4.1 The Selected Bidder shall cause the Operator to enter into and execute the MOM Agreement with the Project SPV in the form and format set out in **Schedule – 1** hereto.

3.4.2 The Selected Bidder shall ensure that the Operator performs and fulfils its obligations under the MOM Agreement. The Operator shall be liable for compliance of the obligations under the MOM Agreement.

3.5 **Execution of the Shareholders Agreement**

3.5.1 The Selected Bidder shall cause the Operator to enter into and execute the Shareholders Agreement with the Project SPV in the form and format set out in **Schedule – 2** hereto.

3.5.2 The Selected Bidder shall ensure that the Operator performs and fulfils its obligations under the Shareholders Agreement. The Selected Bidder ensure for compliance of the obligations of the Operator under the Shareholders Agreement.

3.5.3 The Operator shall subscribe to 10% (ten percentage) of the Equity Share Capital of the Project SPV as per details provided in the Shareholders Agreement.

3.6 **Selected Bidder's obligations under the MOM Agreement**

3.6.1 The Selected Bidder shall have the duty, obligation and responsibility to ensure due performance of the Operator under the MOM Agreement, for ensuring seamless operations at the Port and for carrying out appropriate marketing and business promotion activities for ensuring annual cargo handling levels as stipulated under the Minimum Guaranteed Traffic.

3.6.2 The Operator is required to perform and fulfil its obligations under the MOM Agreement and shall be liable for compliance of its obligations under the MOM Agreement.

3.6.3 The Authority hereby accepts and acknowledges that upon execution of the MOM Agreement that the Operator shall be the entity which shall undertake and perform the duties, obligations and responsibilities under the MOM Agreement including without limitation the duties, obligations and responsibilities pertaining to management, operation and maintenance of the Terminal Area as per the Scope of the Agreement and to provide the Terminal Services, as per the terms and conditions of this Agreement.

3.6.4 The Selected Bidder shall, for the performance of its obligations hereunder and the due performance of the duties, obligations and responsibilities of the Operator under the MOM Agreement, till the expiry of Agreement Period, provide to the Authority the irrevocable and unconditional Performance Security, from an Approved Bank, as per the requirements of Article 5 of this Agreement.

3.7 **Minimum Guaranteed Traffic**

The Operator shall unconditionally guarantee the Project SPV, annual cargo handling of the levels as per the requirements of the MOM Agreement ("**Minimum Guaranteed Traffic**") and except as may be expressly set out in the MOM Agreement, shall not be entitled to any relaxation of its guarantee in this respect

3.8 **Management Fee**

In consideration of the obligations of the Selected Bidder under this Agreement and the Operator under the MOM Agreement:

- (a) the Authority shall be liable to pay an annual fixed management fees as set out in **Schedule – 4** hereto (the "**Annual Fixed Management Fee**") to the Selected Bidder, in monthly instalments within fifteen (15) days of completion of every month of operations. It is clarified that the payment of the Annual Fixed Management Fee by the Authority to the Selected Bidder shall be payable in Indian Rupees; and
- (b) the Project SPV shall be liable to pay the Variable Management Fees to the Operator as set out in the MOM Agreement in accordance with the terms thereof.

3.9 **Intellectual Property Rights**

3.9.1 All Intellectual Property Rights developed by the Selected Bidder or the Operator shall be transferred to the Project SPV or ABI at the request of the Project SPV, upon expiry/termination of this Agreement or the MOM Agreement.

3.9.2 This Agreement does not establish for the Selected Bidder or the Operator and they shall not during or after the Agreement Period, claim any right of business and patronage at the Terminal Area.

3.10 **No title or interest in the Terminal Facilities**

- 3.10.1 The Selected Bidder hereby agree that the juridical and legal title and ownership of the Terminals and all Terminal Facilities and any other existing tangible and intangible assets comprised in the Terminals will always vest in ABI or the Project SPV (as the case may be) at all times.
- 3.10.2 This Agreement is not, and shall not be considered as, a lease, sub – lease, tenancy or sub – tenancy of the Terminal and / or the Terminal Facilities. The Selected Bidder or the Operator shall not at any time claim any tenancy, sub – tenancy in respect of the Terminal and / or the Terminal Facilities under any Applicable Law presently in force and / or any Applicable Law which may be enacted hereafter.
- 3.10.3 The Selected Bidder or the Operator shall not at any time create any Encumbrance on comprising the Terminal and / or the Terminal Facilities or any part thereof.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Selected Bidder Conditions Precedent

- 4.1.1 The Permission shall be subject to and come into effect upon the satisfaction and fulfilment of the following conditions precedent (the "**Selected Bidder Conditions Precedent**"):

Sr. No.	Condition Precedent	Applicable Time Limit
1.	Furnishing of the Performance Security A as set out in this Agreement	Within 20 days from the issuance of the LOA
2.	Furnishing of the Performance Security B as set out in this Agreement	At least 14 days prior to the Commercial Operation Date
3.	Incorporation of the Operator in Iran	Within a period of 30 days from signing of this Agreement
4.	Execution of the MOM Agreement as per the terms of this Agreement by the Operator	Within a period of 180 days from signing of this Agreement
5.	Furnishing of certified true copies of the constituent documents of the Operator	Within 180 days from the signing of this Agreement
6.	Furnishing of the certified true copies of the resolutions adopted by the Board of Directors of the Selected Bidder authorizing the execution, delivery and performance by the Selected Bidder of its obligations under this Agreement	Within 180 days from the signing of this Agreement
7.	Furnishing of the certified true copies of the resolutions adopted by the Board of Directors of the Operator authorizing the execution, delivery and performance by the Operator of its obligations under the MOM Agreement and the Shareholders Agreement with the Project SPV	Within 180 days from the signing of this Agreement
8.	Furnishing a certificate from its principal officer/director on the shareholding pattern of the Operator	Within 180 days from the signing of this Agreement

9.	Procuring and furnishing the following confirmations, in original, from the shareholders of the Selected Bidder: (a) it/they shall at all times comply with the provisions of Article 7 in respect of their shareholding in the Selected Bidder; and (b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing its obligations in accordance with this Agreement	Within 180 days from the signing of this Agreement
10.	Furnishing to the Authority, a legal opinion from the legal counsel of the Selected Bidder with respect to the authority of the Selected Bidder to enter into this Agreement and the enforceability hereof	Within 180 days from the signing of this Agreement
11.	Furnishing to the Authority, a legal opinion from the Iranian legal counsel of the Operator with respect to the authority of the Operator to enter into the MOM Agreement and the Shareholders Agreement with the Project SPV and the enforceability thereof	Within 180 days from the signing of this Agreement
12.	Make endeavours to implement an effective marketing and organization plan and approval of the same by the Authority.	Within 180 days the execution of the MOM Agreement by the parties thereto

- 4.1.2 The Selected Bidder Conditions Precedent shall be complied within the aforesaid timelines. The Selected Bidder shall promptly inform the Authority in writing when the Selected Bidder Conditions Precedent have been satisfied.
- 4.1.3 Any of the Selected Bidder Conditions Precedent may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions and the Selected Bidder shall be bound to ensure compliance within such additional time as may be specified by the Authority.
- 4.1.4 If the Authority has fulfilled all the Authority Conditions Precedent under Article 4.2 and has not waived or extended the time under Article 4.1.3 above for the Selected Bidder Conditions Precedent, and if the Selected Bidder has failed to fulfil the Selected Bidder Conditions Precedent to be fulfilled by it under Article 4.1, the Selected Bidder shall be liable to pay Liquidated Damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day's delay until fulfilment of the Selected Bidder Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Security furnished by the Selected Bidder. In such event, having regard to the quantum of Liquidated 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 Selected Bidder is still not in a position to comply with the Selected Bidder Conditions Precedent, then the Agreement shall be liable to be terminated as provided for in Article 10 below.

4.2 **Authority Conditions Precedent**

4.2.1 The Authority shall satisfy and fulfil the following conditions precedent (the "**Authority Conditions Precedent**"):

- (i) incorporation of the Project SPV in Iran and assigning all rights and obligations of the Authority under the Contract to the Project SPV within 45 (forty five) days from the issuance of the LOA;
- (ii) intimation of the proposed delivery schedule of the equipment under the Contract within a period of 180 days from the date of signing of this Agreement; and
- (iii) Failure to provide Rail Mounted Gantry Crane (RMG) and Rubber Tyred Gantry Crane (RTG) on or prior to the Commercial Operation Date.

4.2.2 The Authority shall promptly inform the Selected Bidder in writing when the Authority Conditions Precedent have been satisfied.

4.2.3 Any of the Authority Conditions Precedent may be waived fully or partially by the Selected Bidder at any time in its sole discretion or the Selected Bidder may grant additional time for compliance with these conditions and the Authority shall be bound to ensure compliance within such additional time as may be specified by the Selected Bidder.

4.2.4 If the Selected Bidder has fulfilled all the Selected Bidder Conditions Precedent under Article 4.1 and has not waived or extended the time under Article 4.2.3 above for the Authority Conditions Precedent, and if the Authority has failed to fulfil the Authority Conditions Precedent to be fulfilled by it under Article 4.2, the Authority shall be liable to pay Liquidated Damages of a sum 0.1% (zero point one percent) of the amount secured under the Performance Security for each day's delay until fulfilment of the Authority Conditions Precedent subject to a maximum of 5% (five percent) of the amounts secured under the Performance Security. In such event, having regard to the quantum of Liquidated 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 Authority is still not in a position to comply with the Authority Conditions Precedent, then the Agreement shall be liable to be terminated as provided for in Article 10 of this Agreement.

4.3 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 4.1 to 4.2, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Selected Bidder to comply with the Selected Bidder Conditions Precedent, the Performance Security shall stand forfeited. If such termination is on account of failure of the Authority, the Authority shall be obliged to return the Performance Security. It is clarified that except for the payment as stipulated in the foregoing Articles 4.1 and 4.2 and forfeiture in this Article 4.3, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

ARTICLE 5
PERFORMANCE SECURITY AND LIQUIDATED DAMAGES

5.1 Performance Security

5.1.1 The Selected Bidder shall, for the performance of its obligations hereunder till the expiry of Agreement Period, provide to the Authority the irrevocable and unconditional guarantees (collectively, hereinafter referred to as the "**Performance Security**") from an Approved Bank, as per the following:

- (i) For a sum equivalent to Rs. 13,60,00,000 (Rupees thirteen crore and sixty lakhs only) ("**Performance Security A**") in the form set forth in **Schedule - 3** hereto, as per the terms and conditions of this Agreement; and
- (ii) For a sum equivalent to Rs. 6,80,00,000 (Rupees six crores and eighty lakhs only) ("**Performance Security B**") in the form set forth in **Schedule - 3** hereto, as per the terms and conditions of this Agreement.

Until such time the Performance Security A is provided by the Selected Bidder pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security A pursuant hereto, the Authority shall release the Bid Security to the Selected Bidder.

5.1.2 The Performance Security shall have validity till the expiry of 6 (six) months from the end of the Agreement Period. Provided, however, that the Selected Bidder shall provide a Performance Security hereunder initially for a period of 12 (twelve) years and 6 (six) months. In the event, the Agreement Period extends beyond the said duration as per the notification of the Commercial Operation Date, the Selected Bidder shall procure that the validity of the Performance Security is extended for such additional period. The said extension shall be carried out immediately upon notification of the Commercial Operation Date.

5.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event the Performance Security A and / or the Performance Security B is not provided by the Selected Bidder within the time period provided in this Agreement, the Selected Bidder may forfeit the Bid Security as Liquidated Damages payable to the Authority, and thereupon all rights, privileges, claims and entitlements of the Selected Bidder under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Selected Bidder, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

5.2 Appropriation of Performance Security

Upon occurrence of a Selected Bidder Event of Default or failure to meet any Selected Bidder Conditions Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Selected Bidder Event of Default or for failure to meet any Selected Bidder Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Selected Bidder shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation,

to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Selected Bidder shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 9.

5.3 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 Selected Bidder to the 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 Liquidated Damages payable by the Selected Bidder, and the amount so determined shall be appropriated from the Bid Security or the Performance Security, as the case may be.

5.4 Liquidated Damages

5.4.1 On occurrence of any of the Selected Bidder Events of Default, the Selected Bidder shall be liable pay the Liquidated Damages as stipulated in the MOM Agreement hereto.

5.4.2 In the event, any penalty or cost is imposed on the Project SPV/the Authority by ABI under the Contract on account of any Operator Event of Default under the MOM Agreement, the Authority shall have the right to recover such amount from the Selected Bidder as Liquidated Damages and the Selected Bidder shall be liable to pay such Liquidated Damages to the Authority/the Project SPV, as may be required by the Authority.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Selected Bidder

The Selected Bidder represents and warrants to the Authority that:

- (i) it is duly organized and validly existing Applicable Laws, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) it has the financial standing and capacity including but not limited to the Financial Capacity and the Technical Capacity with O&M experience to undertake the Project in accordance with the terms of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

- (v) it is subject to Applicable Laws, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder or issue of jurisdiction;
- (vi) the information furnished by the Selected Bidder and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or 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;
- (x) it has not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
- (xi) it has not been charge sheeted by any Government Authority or convicted by any Court of Law, in respect of the matters relating to the security and integrity of India;
- (xii) no investigation by a regulatory authority is pending against the Selected Bidder, or against any of their respective chief executive officer or any of the directors, managers or employees;
- (xiii) 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;
- (xiv) the Selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, and has requested the Authority to enter into this Agreement with the Selected Bidder pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth

in this Agreement;

- (xv) all its rights and interests in the Project shall pass to and vest in the Authority on the Handover Date as per the Applicable Laws and the Applicable Permits, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Terminal Facilities 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;
- (xvi) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to 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;
- (xvii) 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 Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority or any Government Authority, in connection herewith or during the bid process;
- (xviii) all information provided by the Selected Bidder herein or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (xix) all undertakings and obligations of the Selected Bidder arising herein or otherwise shall be binding on the Selected Bidder as if they form part of this Agreement.

6.2 **Representations and warranties of the Authority**

The Authority represents and warrants to the Selected Bidder that:

- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement pursuant to approvals and other Applicable Permits, to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (ii) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (iii) it has the financial standing and capacity to perform its obligations under this Agreement;
- (iv) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (v) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

- (vi) it has complied with Applicable Laws in all material respects;

- (vii) it has good and valid right to the Terminal Area, and has the power and authority to grant the Permission to the Selected Bidder hereunder.

6.3 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 right, remedy or obligation of either Party under this Agreement.

ARTICLE 7 SHAREHOLDING

7.1 Shareholding of the Operator

- 7.1.1 The Selected Bidder shall legally and beneficially hold and maintain the Management Control of the Operator during the Agreement Period, at all times. Further, the Lead Member shall legally and beneficially hold and maintain not less than 51% (fifty – one percent) of the paid up equity capital of the Operator during the Agreement Period, at all times. No change in the Management Control of the Operator shall be permitted unless required under the Applicable Laws of Iran.

- 7.1.2 Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Operator in favour of the lenders of the Selected Bidder as security for the financial assistance for the purposes of this Agreement subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Authority as stated hereinbefore.

7.2 Management Control of the Selected Bidder

- 7.2.1 The Selected Bidder shall ensure that there is no direct or indirect change in the Management Control of the Selected Bidder (and if it is a consortium, each of the Lead Member and the Member) during the Agreement Period, at all times except as permitted hereunder.

- 7.2.2 Notwithstanding the aforesaid, any direct or indirect change in the Management Control of the Selected Bidder, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the 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 and/or public policy be disqualified from undertaking the Project.

7.2.3 Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Selected Bidder in favour of its lenders as security for the financial assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Authority as stated hereinbefore.

7.3 **Constituent Documents**

7.3.1 The Selected Bidder shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium including the shareholding restrictions hereunder.

7.3.2 In particular, the articles of association and the memorandum of association of the Selected Bidder shall be amended within 1 (one) month of the LOA 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 Selected Bidder shall submit the amended articles of association and the memorandum of association to the Authority as soon as may be reasonably possible.

7.3.3 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 Authority and the articles of association and memorandum of association of the Selected Bidder shall include a specific provision to this effect.

**ARTICLE 8
EVENTS OF DEFAULT**

8.1 **Selected Bidder Events of Default**

The Authority shall have the right to terminate this Agreement upon the occurrence of a Selected Bidder Event of Default. Each of the following events or circumstances, to the extent not caused by an Authority Event of Default, shall be considered for the purposes of this Agreement as events of default of the Selected Bidder ("**Selected Bidder Events of Default**"):

8.1.1 occurrence of an 'Operator Event of Default' under the MOM Agreement;

8.1.2 occurrence of an event of default under the Shareholders Agreement;

8.1.3 the failure of the Selected Bidder to perform or discharge any of its duties and obligations in accordance with the terms and conditions of this Agreement;

8.1.4 the dissolution, insolvency and / or bankruptcy of the Selected Bidder as admitted by a court of competent jurisdiction under Applicable Laws;

8.1.5 the attachment of the assets and / or properties of the Selected Bidder which have material adverse impact on the fulfilment of its duties and obligations under the Agreement and which continues for a period of more than ninety (90) days;

- 8.1.6 assignment of any of the rights and / or benefits of the Selected Bidder under this Agreement by the Selected Bidder without the prior written approval of the Authority to any third party;
- 8.1.7 any representation made or warranties given by the Selected Bidder under this Agreement is found to be false or misleading;
- 8.1.8 the Selected Bidder passing a resolution for its voluntary winding up;
- 8.1.9 appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Selected Bidder by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- 8.1.10 any scheme of merger or amalgamation of the Selected Bidder with any other company or reconstruction or transfer of the whole or part of the Selected Bidder's undertaking without the prior written approval of the Authority; and
- 8.1.11 the Selected Bidder engaging or knowingly or unknowingly allowing any of its employees, agents, contractors, sub – contractors and / or representatives to engage in any activity prohibited under this Agreement and / or Applicable Laws or which constitutes a breach of the terms and conditions of this Agreement or a breach of or an offence under any Applicable Laws.

8.2 Authority Event of Default

The Selected Bidder shall have the right to terminate this Agreement upon the occurrence of an Authority Event of Default. Each of the following events or circumstances, to the extent not caused by a Selected Bidder Event of Default, shall be considered for the purposes of this Agreement as events of default of the Authority ("**Authority Events of Default**"):

- 8.2.1 Failure to pay the Annual Fixed Management Fees by the Authority to the Selected Bidder by the due date under this Agreement and such default is not cured within a period of 180 (one hundred and eighty) days therefrom;
- 8.2.2 Failure to pay the Variable Management Fees by the Project SPV to the Operator by due date under the MOM Agreement and such default is not cured within a period of 180 (one hundred and eighty) days therefrom; or
- 8.2.3 Appointment of a provisional liquidator, administrator, trustee or receiver of the Authority by a court of competent jurisdiction in proceedings for bankruptcy, winding up or any other legal proceedings.

**ARTICLE 9
TERMINATION**

9.1 Rights of the Parties to Terminate

- 9.1.1 Upon the occurrence of a Selected Bidder Event of Default, the Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- 9.1.2 Upon the occurrence of an Authority Event of Default, the Selected Bidder shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- 9.1.3 The Agreement shall automatically stand terminated upon the termination of the MOM Agreement and / or the Contract for any reason whatsoever in accordance with the terms thereof.

9.2 **Termination Procedure**

The Party entitled to terminate this Agreement on account of an Event of Default of other Party shall do so by issue of a notice in writing ("**Termination Notice**") of at least ninety (90) days to the other Party inter – alia stating the reasons for invocation of the right to terminate the Agreement.

9.3 **Obligations in relation to Termination**

Upon the exercise of the right of termination by any Party in accordance with the requirements of the Agreement, the Parties shall 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 Terminal Services and Terminal Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss and / or damage occasioned or suffered on account of such breach.

9.4 **Consequences of Termination**

- 9.4.1 In case this Agreement/the MOM Agreement is terminated prior to expiry of the Agreement Period due to any Authority Event of Default or a Force Majeure Event (as defined under the MOM Agreement), the Authority hereby undertakes to pay to the Selected Bidder an amount calculated as follows (the "**Termination Costs**"):

$$T = (\text{Total Capital Investment} / 10) \times R$$

Where:

'T' is the Termination Costs payable on the Handover Date as final settlement of all dues to the Selected Bidder and the Operator upon the termination of the MOM Agreement and this Agreement in accordance with the terms hereof;

'Total Capital Investment' shall mean the total capital investment made and / or expenditure incurred by the Selected Bidder directly for the Project, as evidenced by relevant supporting documents to the satisfaction of the Authority, including without limitation detailed project report, project cost estimates etc. which are shared with the Authority, on or prior to the commencement of operations of the Port;

'R' is the balance period out of the total term of 10 years left unperformed by the Operator under the MOM Agreement, which shall be counted from the date of termination of the MOM Agreement.

For the avoidance of any doubt, it is hereby clarified by the Parties that in the event of termination on account of any Authority Event of Default or a Force Majeure Event (as defined under the MOM Agreement), the Selected Bidder shall not be entitled to any compensation as damages or otherwise, other than the Termination Costs as payable under this Agreement.

- 9.4.2 In case of termination of this Agreement due to the occurrence of a Selected Bidder Event of Default, the Performance Security provided hereunder shall stand forfeited and shall be encashed as Liquidated Damages as a genuine pre – estimate of the loss and damage caused to the Authority.
- 9.4.3 In case of termination of this Agreement due to the occurrence of the Authority Event of Default or a Force Majeure Event (as defined under the MOM Agreement), the Performance Security shall be released to the Selected Bidder.
- 9.4.4 The Termination Costs as set out above in Article 9.4.1 shall be payable and the Performance Security shall be released by the Authority only after the completion of the Handover Plan.

9.5 **Compliance with the Handover Plan and other transfer obligations under the MOM Agreement**

The Selected Entity shall ensure that the Operator complies with the transfer obligations under the MOM Agreement including the Handover Plan, Condition Survey, etc.

**ARTICLE 10
DISPUTE RESOLUTION**

10.1 **Amicable Settlement**

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

10.2 **Arbitration**

- 10.2.1 Any dispute, disagreement, difference, controversy or claim arising out of, relating to or in connection with this Agreement (including any question regarding its existence, validity, interpretation, performance, breach or termination) and any dispute relating to any non- contractual obligations arising out of or in connection with it (a "**Dispute**")

shall be referred to and settled by an arbitration in accordance with the Arbitration and Conciliation Act, 1996.

10.2.2 The arbitration shall be conducted as follows:

- (a) Any Party raising the Dispute and invoking the arbitration shall send a written notice of arbitration with details of the dispute ("**Arbitration Notice**") to other Party.
- (b) The Authority shall appoint 1 (one) arbitrator and the Selected Bidder (jointly if it is a consortium) shall appoint another arbitrator and the 2 (two) arbitrators so appointed shall appoint the presiding arbitrator. In the event, any of the Parties does not appoint an arbitrator or the two arbitrators appointed by the Parties do not appoint third arbitrator within a period of thirty (30) days from the date of the Arbitration Notice, such arbitrator(s) will be appointed by the court in accordance with the Arbitration and Conciliation Act, 1996.
- (c) All proceedings in any such arbitration shall be conducted in English.
- (d) The seat of the arbitration proceedings shall be New Delhi (India).
- (e) The law of the arbitration pursuant to this shall be Indian Law.
- (f) The arbitrator shall be free to award costs as may be appropriate.
- (g) The arbitral award shall be a reasoned award and shall be in writing.

10.2.3 Enforcement of Award

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

10.2.4 Fees and Expenses

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

10.2.5 Performance during Arbitration

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations

under this Agreement without prejudice to a final adjustment in accordance with such award.

**ARTICLE 11
GENERAL PROVISIONS**

11.1 Notices

- (a) Any notice or other communication required or permitted hereunder to any Party shall be in writing and shall be either personally delivered or sent by reputed overnight courier service, or transmitted by facsimile (with confirming copy sent by reputed overnight courier service), or sent by registered post acknowledgment due, or sent by electronic mail. Any notice or other communication shall be sent or delivered to the receiving Party at the address set forth herein, or at such other address as the Parties may from time to time designate in writing:

For the Authority:

Address: [•]
Telephone No.: [•]
Fax No.: [•]
Email: [•]
Attention: [•]

{For the Selected Bidder/Lead Member:

Address: [•]
Telephone No.: [•]
Fax No.: [•]
Email: [•]
Attention: [•]}⁴

{For the Other Member:

Address: [•]
Telephone No.: [•]
Fax No.: [•]
Email: [•]
Attention: [•]}⁵

- (b) Such notices and other communication duly given shall be deemed to be effective:
 - (i) if sent by personal delivery, upon delivery at the address of the relevant Party;

⁴ To modify accordingly as relevant in case of joint venture / consortium and in case of single entity.

⁵ To modify accordingly as relevant in case of joint venture / consortium and in case of single entity.

- (ii) if sent by post (with acknowledgment of receipt), 2 (two) Business Days after the date of posting;
- (iii) sent by reputed overnight courier service 2 (two) Business Days after the date of dispatch;
- (iv) if sent by facsimile, when the activity report confirms successful transmission, or if such day is not a Business Day or after 5 P.M. on any Business Day in the place of delivery, the next following Business Day; and
- (v) if by way of email as soon as the email leaves the system of the sender to be transmitted to the addressee.

11.2 **Entire Agreement**

This Agreement together with the MOM Agreement and the Shareholders Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersede all or any prior negotiations, representations, or agreements, either written or oral.

11.3 **Governing Law and Jurisdiction**

- 11.3.1 This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and be governed by the laws of India.
- 11.3.2 Subject to the provisions of Article 10 (*Dispute Resolution*), the courts of New Delhi shall have exclusive jurisdiction to try and entertain and disputes arising out of this Agreement.

11.4 **Waiver**

No failure or delay on the part of any of the Parties to this Agreement relating to the exercise of any right, power, privilege or remedy provided under this Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other Party to this Agreement nor shall any single or partial exercise of any right, power, privilege, or remedy preclude any other or further exercise of such or any other right, power, privilege or remedy provided in the Agreement all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a Party at law.

11.5 **Assignment**

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

11.6 **Amendment**

No change or modification of the Agreement shall be valid unless the same shall be in

writing and signed by the Parties.

11.7 Severability

Each and every obligation under the Agreement shall be treated as a separate obligation and shall be severally enforceable as such and in the event of any obligation or obligations being or becoming unenforceable in whole or in part. To the extent that any provision of the Agreement is invalid, unenforceable or prohibited by Applicable Laws, the Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from either Party hereto to the other, and the remainder of the Agreement shall be valid, binding and of like effect as though such provision was not included herein.

11.8 Counterparts

This Agreement may be signed by facsimile or in any number of counterparts, each of which is an original and all of which, taken together, constitutes one and the same instrument.

11.9 Relationship

Save as provided in this Agreement none of the Parties shall have any right, power or authority, whether express or implied, to enter into, assume any duty or obligation on behalf of or bind any of the others and nothing in this Agreement shall constitute a partnership or a relationship of principal or agent between any of the Parties.

11.10 Survival

Notwithstanding anything contained herein, the provisions of Article 5 (*Performance Security and Liquidated Damages*), Article 9.3 (*Obligations in relation to Termination*), Article 9.4 (*Consequences of Termination*), Article 9.5 (*Compliance with the Handover Plan and other transfer obligations under the MOM Agreement*), Article 10 (*Dispute Resolution*) and Article 11 (*General Provisions*), including those provisions of this Agreement that would survive by implication shall survive and remain in full force and effect after the termination/expiry of this Agreement. All accrued rights and outstanding obligations before termination/expiry of this Agreement shall also survive the termination/expiry of this Agreement.

11.11 Construction

Each Party represents, warrants and acknowledges that it has read and understood the terms and conditions of this Agreement and has sought necessary advice in relation to this Agreement and that the Agreement or any or other documentation will not be construed in favour of or against either Party due to that Party's drafting of such documents.

11.12 Costs

Each Party shall bear its own fees and expenses in connection with the preparation, execution and performance of the Agreement and the transactions contemplated

hereby and thereby, including, without limitation, all fees and expenses of agents, representatives, counsel and accountants.

11.13 **Set – Off**

In the event any amount is due and payable by the Authority to the Operator and / or the Selected Bidder under this Agreement or under the MOM Agreement, the Authority shall have the right to set – off the same against any sums payable by it to the Operator and / or the Selected Bidder and pay the balance remaining.

11.14 **Stamp duty**

Any stamp duty, registration and other related costs payable on the Agreement shall be equally borne by the Parties.

11.15 **Specific performance**

The Parties agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under the Agreement, shall be subject to the right of specific performance and shall be specifically enforceable against the Party having such obligations. The Parties acknowledge that any breach or non – compliance of the provisions of the Agreement by one Party will cause immediate irreparable harm to the other Party (“**Affected Party**”) for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such non – compliance, potential non – compliance, breach or threatened breach by other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party’s right to any remedies at law or in equity, including without limitation the recovery of damages from the other Party.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed on the day and year first hereinabove written and in the manner hereinafter mentioned.

SIGNED, SEALED AND DELIVERED by the within
named **Authority** by the hand of

its authorized signatory in whose presence the
Common Seal of the Authority, has been affixed
hereto pursuant to the resolution passed by its
Board of Directors on
_____.

{SIGNED, SEALED AND DELIVERED by the within
named the **{Selected Bidder/Lead Member}**,
by the hand of

its authorized signatory in whose presence its
Common Seal, has been affixed hereto pursuant
to the resolution passed by its Board of Directors
on
_____}⁶

{SIGNED, SEALED AND DELIVERED by the within
named the **Other Member**, by the hand of

its authorized signatory in whose presence its
Common Seal, has been affixed hereto pursuant
to the resolution passed by its Board of Directors
on
_____}⁷

⁶ To modify accordingly as relevant in case of joint venture / consortium and in case of single entity.

⁷ To modify accordingly as relevant in case of joint venture / consortium and in case of single entity.

SCHEDULE – 1
DRAFT OF THE MOM AGREEMENT

(annexed hereto separately)

SCHEDULE – 2
DRAFT OF THE SHAREHOLDERS AGREEMENT
(annexed hereto separately)

SCHEDULE – 3
FORMAT OF BANK GUARANTEE FOR PERFORMANCE SECURITY

To

India Ports Global Limited,
 4th Floor, Nirman Bhavan,
 Mumbai – 400 010,
 Maharashtra, India,

WHEREAS

- A. [●]⁸, a company within the meaning of the Companies Act, 2013, with Corporate Identification Number [●], and having its registered office at [●] (hereinafter referred to as {the “**Selected Bidder**”}/{"**Lead Member**"}, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors – in – interest and permitted assigns) {and [●], a company within the meaning of the Companies Act, 2013, with Corporate Identification Number [●], and having its registered office at [●] (hereinafter referred to as the “**Other Member**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors – in – interest and permitted assigns)} {the Lead Member and the Other Member are collectively referred to as the “**Selected Bidder**”}⁹ is required to provide a bank guarantee for an amount equal to Rs. [●] (Indian Rupees [●] only) as a performance security for a period of 12 (twelve) years and 6 (six) months from the date hereof.
- B. The Performance Security is required to be provided in favour of **India Ports Global Limited** (the “**Authority**”), a company within the meaning of the Companies Act, 2013, with Corporate Identification Number [●], and having its registered office at 1107, Raheja Centre, 214, FPJ Marg, Nariman Point, Mumbai – 400 021, Maharashtra, India.
- C. We, [*Name of the Bank*] having our registered office at and one of its branches located at Mumbai at (“**Bank**”), at the request of the Selected Bidder does hereby undertake to pay to the Authority an amount not exceeding Indian Rupees [●] (Indian Rupees [●] only) to secure the obligations of the Selected Bidder under the Master Agreement on demand from the Authority on the terms and conditions herein contained herein.

NOW THEREFORE, the Bank hereby issues in favour of the Authority this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Selected Bidder for the amount Indian Rupees [●] (Indian Rupees [●] only).

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Authority, a sum or sums (by way of one or more claims) not exceeding in the aggregate the amount of Indian Rupees [●] (Indian Rupees [●] only) without the Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Authority and Selected Bidder on any matter whatsoever. The Bank undertakes to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Selected Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.

⁸ In the event, the selected bidder is a consortium, the word ‘Lead Member’ to be used. In case of single entity, the ‘Selected Bidder’ to be used.

⁹ To be retained and filled up if the selected bidder is a consortium.

2. The Bank acknowledges that any such demand by the Authority of the amounts payable by the Bank to the Authority shall be final, binding and conclusive evidence in respect of the amounts payable by Selected Bidder to the Authority under the Master Agreement.
3. The Bank hereby waives the necessity for the Authority from demanding the aforesaid amount or any part thereof from the Selected Bidder and also waives any right that the Bank may have of first requiring the Authority to pursue its legal remedies against the Selected Bidder, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the Authority that the Authority shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
 - (i) vary and/or modify any of the terms and conditions of the Master Agreement;
 - (ii) extend and / or postpone the time for performance of the obligations of the Selected Bidder under the Master Agreement, or
 - (iii) forbear or enforce any of the rights exercisable by the Authority against the Selected Bidder under the terms and conditions of the Master Agreement.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Authority or any indulgence by the Authority to the Selected Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Authority receives the full amount due hereunder as if no such withholding had occurred.
6. The Bank agrees that the Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Selected Bidder.
7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Master Agreement and that it shall continue to be enforceable till all the obligations of the Selected Bidder under or by virtue of the said Master Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the Master Agreement with respect to the Performance Security have been fully and properly carried out by the Selected Bidder and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the [*date of expiry of bank guarantee*] we shall be discharged from all liability under this guarantee thereafter.
8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Authority shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at New Delhi.

10. This Guarantee shall be payable to the Authority, at the branch of the Bank at Mumbai, having its address as
11. The Bank has the power to issue this Guarantee in favour of the Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.
12. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.
13. Notwithstanding anything contrary contained in any law for the time being in force or banking practice, this guarantee shall not be assignable or transferable by the beneficiary. Notice or invocation by any person such as assignee, transferee or agent of beneficiary shall not be entertained by the bank. Any invocation of guarantee can be made only by the beneficiary directly.
14. Notwithstanding anything contained herein above,
 - a. liability of the bank under this bank guarantee shall not exceed Indian Rupees [●] (Indian Rupees [●] only).
 - b. This bank guarantee shall be valid up to [date of expiry of bank guarantee]
 - c. We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if you serve upon us a written claim or demand on or before [date of expiry of bank guarantee]

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

(Signature)

(Name and Designation)

(Bank Stamp)

SCHEDULE – 4
ANNUAL FIXED MANAGEMENT FEES

SR. NO.	RELEVANT PERIOD	AMOUNT OF ANNUAL FIXED MANAGEMENT FEES (IN INDIAN RUPEES)
1.	For the period of 365 (three hundred and sixty five) days commencing on and from the Commercial Operation Date (" First Year of Operations ")	INR 31,95,42,500/-
2.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the First Year of Operations (" Second Year of Operations ")	INR 33,55,19,625/-
3.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Second Year of Operations (" Third Year of Operations ")	INR 35,22,95,606.25/-
4.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Third Year of Operations (" Fourth Year of Operations ")	INR 36,99,10,386.56/-
5.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Fourth Year of Operations (" Fifth Year of Operations ")	INR 38,84,05,905.89/-
6.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Fifth Year of Operations (" Sixth Year of Operations ")	INR 40,78,26,201.19/-
7.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Sixth Year of Operations (" Seventh Year of Operations ")	INR 42,82,17,511.24/-
8.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Seventh Year of Operations (" Eighth Year of Operations ")	INR 44,96,28,386.81/-
9.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Eighth Year of Operations (" Ninth Year of Operations ")	INR 47,21,09,806.15/-
10.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Ninth Year of Operations (" Tenth Year of Operations ")	INR 49,57,15,296.45/-

EXHIBIT – 1
A COPY OF THE CONTRACT

(annexed hereto separately)